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IN THE MATTER OF:)

) Docket No.

DETERMINATION OF CABLE) 14-CRB-0010-CD

ROYALTY FUNDS) (2010-2013)

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6 DETERMINATION OF CABLE) 14-CRB-0010-CD

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9 BEFORE: THE HONORABLE SUZANNE BARNETT

10 THE HONORABLE JESSE M. FEDER

11 THE HONORABLE DAVID R. STRICKLER

12

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20 VOLUME XIII

21

22

23 Reported by: Karen Brynteson, RMR, CRR, FAPR

24

25

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1 P R O C E E D I N G S

2 (9:05 a.m.)

3 JUDGE BARNETT: Good morning. Please
4 be seated.5 Are we beginning with Hartman this
6 morning?

7 MR. LAANE: Dr. Israel, Your Honor.

8 JUDGE BARNETT: Israel, okay. And
9 where is Dr. Israel? There he is.10 MR. LAANE: He's right here. Joint
11 Sports Claimants call Dr. Mark Israel.

12 JUDGE BARNETT: Good morning.

13 THE WITNESS: Good morning.

14 JUDGE BARNETT: Please raise your
15 right hand.

16 Whereupon--

17 MARK ISRAEL,
18 having been first duly sworn, was examined and
19 testified as follows:

20 JUDGE BARNETT: Please be seated.

21 DIRECT EXAMINATION

22 BY MR. LAANE:

23 Q. Good morning, Dr. Israel.

24 A. Good morning.

25 Q. Please introduce yourself to the

1 Judges.

2 A. I'm Mark Israel. I'm an economist. I
3 -- local in D.C. I work for a firm called
4 Compass Lexecon, where I'm a senior managing
5 director.

6 Q. And could you just give us an overview
7 of your educational background?

8 A. Sure. So I'm -- I have a Bachelor's
9 degree from Illinois Wesleyan University, a
10 school in central Illinois, in math and
11 economics. Then went on and got a Master's
12 degree in economics at the University of
13 Wisconsin, worked for a few years, and then
14 went and got a Ph.D. in economics from Stanford
15 University, which I finished in 2000.

16 Q. And do you have any areas of
17 specialization within the field of economics?

18 A. Yeah, generally, I'm an industrial
19 organization economist. So I work on
20 competition in markets and pricing matters. I
21 also consider myself an applied econometrician.

22 As far as areas of focus, a great deal
23 of my work has been on television, media
24 generally, telecom-type industries, although I
25 work on a wide variety of industries.

1 Q. You mentioned applied econometrics.
2 Do you personally have experience designing and
3 conducting regression analyses?

4 A. Yeah, I do it all the time. It's
5 probably the single best description of what I
6 do for a living.

7 Q. And have you previously served as an
8 expert in litigation matters?

9 A. Several times, yes.

10 Q. And can you just give us a couple
11 examples of those?

12 A. Sure. So I've testified in federal
13 court three times in the last four years on
14 merger trials. One for the government, two for
15 the parties. I've worked on a variety of state
16 court matters, class certification, damages,
17 several arbitration matters.

18 Q. And were you qualified as an expert in
19 those proceedings?

20 A. Yes, I was.

21 Q. How long have you been with Compass
22 Lexecon?

23 A. Just over 12 years.

24 Q. And what did you do professionally
25 before joining Compass Lexecon?

1 A. So after leaving Stanford, I went to
2 Northwestern University, where I taught in the
3 Kellogg School of Management. I taught
4 business strategy and economics to MBA
5 students, Ph.D. students at Northwestern.

6 Q. And do you continue to do some
7 teaching?

8 A. Yeah. I still do some sort of
9 executive education teaching or various
10 programs, kind of on an intermittent basis. I
11 really enjoy teaching, so I try to get back to
12 it when I -- when time permits.

13 Q. And is that also with the Kellogg
14 School?

15 A. Yes.

16 Q. Have you published in the
17 peer-reviewed economics literature?

18 A. Yes, I have. I think I have between
19 10 and 15 published papers in peer-reviewed
20 journals, American Economic Review, the RAND
21 Journal of Economics, the Review of Network
22 Economics, and some others.

23 Q. And then in addition to publishing in
24 the peer-reviewed literature, have any journals
25 asked you to serve as a peer reviewer to

1 determine whether other authors' works are
2 worthy of publication?

3 A. It's usually referred to as being a
4 referee. And I do it a few times a year for
5 similar journals to the ones I mentioned I
6 publish in.

7 Q. Okay.

8 MR. LAANE: Your Honors, Joints Sports
9 Claimants offer Dr. Israel as an expert in
10 economics, industrial organization, and
11 econometrics.

12 JUDGE BARNETT: Hearing no objection,
13 Dr. Israel is so qualified.

14 MR. LAANE: Thank you, Your Honor.

15 BY MR. LAANE:

16 Q. Dr. Israel, what was your assignment
17 in this proceeding?

18 A. Initially, it was to review the
19 results of the Bortz survey and then, in
20 particular, to see if those results were
21 corroborated by marketplace evidence on the
22 prices paid for content and the value on
23 content.

24 Over time, it also included reviewing
25 testimony prepared and presented by other

1 experts and giving my reactions to that
2 testimony.

3 Q. Okay. And, Dr. Israel, in front of
4 you, you should have a binder containing
5 Exhibits 1003 and 1087, which have already been
6 admitted into evidence.

7 Do you have that there in front of
8 you?

9 A. Yes.

10 Q. Okay. And is Exhibit 1003 your
11 written direct testimony?

12 A. Yes.

13 Q. And is 1087 your written rebuttal
14 testimony?

15 A. Yes.

16 Q. Okay. Do you have any corrections to
17 your written testimony?

18 A. There was one very small correction,
19 just discovered in reviewing things for the
20 proceeding. In Table V-5, or Roman V-5, on
21 page 26 of my original testimony, there was a
22 very small error in one cell in the spreadsheet
23 that causes the total household viewing hours
24 for the non-JSC content to go down by a very
25 small amount.

1 But it has no effect on -- changes
2 things in the sort of math in the table at the,
3 you know, second decimal place. It has no
4 effect on anything substantive.

5 Q. Okay. And with that correction, do
6 you declare Exhibits 1003 and 1087 true and
7 correct?

8 A. Yes.

9 Q. All right. So you told us you were
10 asked to evaluate whether marketplace behavior
11 corroborates the results of the Bortz survey.
12 How did you go about exploring that question?

13 A. A couple different ways. The first
14 one was to use regression analysis.
15 Intentionally, I relied on a regression
16 analysis quite similar to what Dr. Waldfogel
17 had used in the last proceeding and Dr. Rosston
18 before him. I wanted to stick closely to that
19 method so that, you know, the Judges could see
20 what that method that has been used and
21 indicated was useful before, what that would
22 apply to the current data.

23 So that's a regression that relates
24 the viewing or the acquisition or the -- the
25 viewing of or the showing of various minutes of

1 different programming by CSOs. It relates to
2 -- those minutes to the dollars paid. So I
3 looked at a regression of that form.

4 And then I also looked at what I call
5 a cable content analysis that looks at cable
6 networks, TBS, TNT, and the top 25 networks,
7 and looks at what they pay for various types of
8 content, sports content and other content, what
9 they pay relative to how many hours of that
10 type of content they show and how many hours
11 are viewed.

12 Q. Okay. And we'll go into some of the
13 details in a minute, but, first, just what were
14 your bottom-line conclusions on whether or not
15 those studies corroborated the Bortz survey
16 results?

17 A. I found they corroborated them very
18 closely, strikingly closely in my experience in
19 doing this kind of work with different methods.
20 The regression analysis found relative
21 valuations that were, you know, quite similar
22 to Bortz.

23 And the cable content analysis found,
24 you know, different types of content had
25 different value relative to how many minutes of

1 it were shown and that the value on sports
2 content, in particular, was quite a bit higher,
3 as the Bortz survey had found.

4 Q. Okay. And let's take a look at Figure
5 V-1 at page 22 of your written testimony.

6 And, Geoff, if you could put up slide
7 2, please.

8 And what is this graph showing us,
9 Dr. Israel?

10 A. So this is summarizing the comparison
11 of my regression results to the Bortz survey
12 results, as I just mentioned. So this is a
13 good summary of my basis for saying that the
14 regression corroborates the Bortz survey.

15 You can see that the ranking -- so the
16 blue bars are my regression results. The red
17 bars are the Bortz results. Each expressed --
18 each expressing the total value, you know, as a
19 percentage out of 100.

20 So you can see the -- you know, for
21 sports in particular, the percentage is very
22 similar. And then the rankings across the
23 various categories are quite similar and
24 certainly similar percentages for the -- for
25 the top categories.

1 JUDGE STRICKLER: Excuse me, counsel.

2 Good morning, Dr. Israel.

3 THE WITNESS: Good morning.

4 JUDGE STRICKLER: How are you?

5 THE WITNESS: Good.

6 JUDGE STRICKLER: When you did your
7 regression, that's the results summarized in
8 this bar chart, were you already aware at the
9 time you began your regression of the results
10 of the Bortz survey or did you do your
11 regression blind and then compare it to the
12 Bortz survey?

13 THE WITNESS: My recollection is that
14 when I did the regression initially, I was not
15 aware of the results of the Bortz survey.
16 Certainly, I became aware of them over time.
17 But I designed the regression similar to what
18 Dr. Waldfogel had done with just a couple
19 changes, all independent of the Bortz survey.
20 And, you know, there has been a main
21 specification throughout that hasn't changed,
22 so I'm pretty sure that specification was
23 designed before I had seen any Bortz results.
24 And the basic specification, with a
25 couple modifications from what Dr. Waldfogel

1 has done, has stayed the same throughout.

2 JUDGE STRICKLER: So you're pretty
3 sure you hadn't seen the Bortz survey first but
4 you're not completely certain?

5 THE WITNESS: I'm certain I had seen
6 it when I designed the initial specification.
7 I just -- as far as when -- I'm pretty -- my
8 recollection of what happened is I'm certain we
9 designed the specification before having seen
10 any results because I got the Waldfogel
11 testimony, figured out a couple very minor
12 changes to make, and I hadn't seen any Bortz
13 results at that point.

14 I don't -- the only thing I don't
15 recall is exactly when in the process the Bortz
16 stuff first came in. But, certainly, the
17 design of the specification was done before I
18 had seen any Bortz results.

19 JUDGE STRICKLER: Were you finished
20 with the results of the regression before you
21 saw the Bortz results?

22 THE WITNESS: Yeah, certainly the
23 first runs of the regression that gave the
24 coefficients were done before I had seen the
25 Bortz results, yes. As we'll go through, there

1 are a couple of sensitivities in the back that
2 I added to check things, and it may be that I
3 had seen the Bortz results and then did those
4 as I went along, but certainly the first
5 specification and the first set of coefficient
6 results in that first regression was all done
7 based on Waldfogel before I had seen the
8 updated Bortz results.

9 JUDGE STRICKLER: Thank you.

10 JUDGE FEDER: Dr. Israel, is it fair
11 to say that there's a reasonably close
12 correlation between your results and the Bortz
13 survey for the top three categories, sports,
14 Program Suppliers, and CTV, but that
15 correlation breaks down somewhat as you get
16 into the smaller categories?

17 THE WITNESS: I think it's fair to say
18 that correlation is closer for the top
19 categories. I mean, I think the way I would
20 describe it is it's very -- it's very close,
21 even quantitatively, for the top three. It's
22 close in ranking overall, but in -- the numeric
23 comparisons, certainly, is less close at the
24 low end.

25 I will say in sort of regression work

1 I've done, I've done a fair amount of
2 regression work where you're valuing the
3 quality of -- of different products or you're
4 valuing different components. I've done some
5 work on automobiles where you're valuing the
6 components of an automobile. And in my
7 experience, when you get sort of toward the
8 lower end, the components with lower value, the
9 regression results can differ a little bit more
10 from what you see from other sources of
11 evidence.

12 If you just see fewer people
13 purchasing a given -- like in a car, fewer
14 people have a different, a certain package they
15 add. Certainly, that package has some value,
16 but pinning it down precisely in a regression,
17 in my experience, it's pretty common that you
18 get a little more variation at the low end.

19 JUDGE FEDER: Thank you.

20 BY MR. LAANE:

21 Q. And we'll come back to a bit more on
22 the regression in a minute.

23 For the moment, Geoff, if you could go
24 to slide 3, please.

25 And, Dr. Israel, this is Figure V-3,

1 of page 29 of your written testimony. And what
2 does this reflect?

3 A. So this is a summary of what I
4 referred to as the cable content analysis. And
5 this is for TBS, in particular. So, obviously,
6 TBS used to be a super-station that was part of
7 these proceedings. It's now a cable network
8 that shows a mixture, you know, mostly shows
9 non-JSC content but has a little sports
10 content.

11 And this is a summary of how much TBS
12 pays per hour of sports programming versus how
13 much it pays per hour of non-sports
14 programming, showing that, obviously, the cost
15 of the sports programming is much higher.

16 Q. Now, what relevance does that have to
17 your assessment of the Bortz survey results?

18 A. I mean, really I take two things from
19 it, both of which are consistent with what the
20 Bortz survey found. One is that an hour is not
21 an hour. I mean, there's differences in values
22 of an hour of different types of programming.

23 And, in particular, obviously, the
24 Bortz survey finds that, you know, a much
25 larger percentage of the value of the content,

1 say, goes to sports content than is reflected
2 in the number of hours. So that it, you know,
3 gets a much higher valuation of sports than the
4 number of hours would reflect.

5 And that's consistent and confirmed by
6 what -- you know, what cable networks like TBS
7 are paying when they put together bundles of
8 content.

9 Q. Thank you.

10 Geoff, you can take that down.

11 Turning back to the regression, are
12 the royalty rates for distant signals set by
13 law?

14 A. Yes.

15 Q. How can the payment of royalties in a
16 regulated market shed light on the issue of
17 relative value that's in front of the Judges?

18 A. It's really the fact that the CSOs
19 choose what content to carry. So that the
20 royalty schedule is set by law. So the price
21 is effectively set by law.

22 But the decision of what to carry,
23 given those prices, is a decision of the CSOs.
24 So you can learn based on the choices people
25 are making. You can see what minutes of

1 different types of content they're -- they're
2 airing and how that -- and how that relates to
3 what they pay.

4 I should note -- you know, this was
5 interesting to me. I've done some work in my
6 own career. I've done a fair bit of work on
7 the insurance industry, some of which was
8 designed -- my dissertation work, in fact,
9 designed to indicate what parts of insurance
10 policies people value.

11 And that was a setting where the
12 prices were set by regulation. And the study
13 was what decisions people make given those
14 prices. So I think it's -- you know, it's
15 reasonably common to try to learn based on the
16 decisions people make when facing regulated
17 pricing.

18 Q. And, Geoff, if you could bring up
19 slide V- -- slide 4, Table V-1.

20 First, just generally, Dr. Israel,
21 what does this table contain?

22 A. So this is the results of my
23 regression analysis.

24 Q. Okay. And we see at the top the
25 minutes of various categories of programming.

1 And then listed below are those control
2 variables?

3 A. Correct. So this is -- discussing a
4 minute ago, the base -- that's the
5 specification of my basic regression, which is
6 quite similar to what -- to what Dr. Waldfogel
7 and Dr. Rosston had used.

8 So the basic setup is you're
9 explaining the royalty payments. That's what's
10 called the left-hand side or dependent
11 variable. And it's being explained based on
12 how many minutes of the different types of
13 programming people, you know, show.

14 And then control variables, I think of
15 the control variables largely to capture the
16 other part of the formula for how much people
17 pay. It's minutes times -- you know, basically
18 times the size of the system. And so the other
19 control variables capture the size of the
20 system as well as things like the -- the
21 features of the payment schedule, the minimum
22 payment and the 3.75 percent royalty rate.

23 Q. Now, you mentioned the minimum payment
24 and we can see there's an indicator variable
25 listed here for payment of the minimum fee.

1 Did you see that Dr. Gray suggested in
2 his rebuttal that you should have simply
3 discarded minimum fee systems from the data
4 set?

5 A. I did see that, yes.

6 Q. Why did you retain those systems in
7 the data set?

8 A. I mean, they're systems that are
9 making choices about what to carry. They're
10 part of the overall data. So, in general it's,
11 in my opinion, better to use all the data,
12 particularly when the data are informative,
13 when you see even the systems making the
14 minimum payment are choosing what to carry. So
15 we can relate what they choose relative to what
16 they pay.

17 And then maybe even most importantly
18 in a regression, the purpose is to compare what
19 different systems carry and what they pay and
20 so it's important to include all the systems in
21 the regression so that you can compare those
22 choices across the full set of systems.

23 Q. Did Dr. Waldfogel include minimum fee
24 systems in his regression?

25 A. Yes.

1 Q. Looking back at the regression results
2 in your table, can you just tell us, for
3 example, if we look at the number 4.836 for
4 Sports or 0.469 for Program Suppliers, what
5 those numbers are and what they mean?

6 A. Yeah. So 4.836 -- well, each of them
7 is what's called the coefficient in the
8 regression analysis. And then the way to
9 interpret those two, in particular, is 4.836
10 would say, for every minute of sports
11 programming that we see being carried, the
12 payment that the CSO is making, indicating, you
13 know, the value they must put on the content.
14 That payment is 4.836 dollars for every minute
15 of sports programming.

16 The .469 says, for every minute of
17 Program Suppliers' programming, we see a
18 payment of, you know, just roughly 47 cents.
19 And so you can see that for different minutes
20 of different types of programming listed
21 throughout, there are different sort of average
22 payments. Again, all of this is controlling
23 for the control variables and then looking at
24 the payments given a minute of that type of
25 programming, controlling for the other

1 variables.

2 JUDGE FEDER: Dr. Israel, how do we
3 interpret the negative coefficients for
4 Canadian, Devotional, and network programming?

5 THE WITNESS: So, I mean, the simple
6 regression answer is it says that for a CSO of
7 a particular size, when we see it, you know,
8 carrying Canadian or Devotional or network
9 programming, its total payments are slightly
10 smaller than we would expect for a typical CSO
11 of that size.

12 So it's associating carriage of that
13 program with slightly smaller payments than you
14 would expect for a CSO of that size.

15 I would say, you know, as an
16 economist, my interpretation of those -- of
17 those negative coefficients is slightly
18 different across the categories. For network
19 programming, and maybe we'll talk more about
20 it, but for network programming, it's obviously
21 not compensable here. I'm using it as a
22 control variable.

23 But the network programming is, you
24 know, from a distant signal, is often
25 duplicative of network programming that the

1 system would have from local stations. So it
2 wouldn't surprise me as an economist that if
3 somebody carries a distant network affiliate,
4 they really are carrying it for something other
5 than the network programming. And so the
6 network programming might be something they
7 would rather not have because they have that
8 from another source.

9 For Canadian and Devotional, frankly,
10 this relates to the question you asked me
11 before. I think sometimes when you have lower
12 value, you know, programming that isn't carried
13 quite as often, the regression sees in the data
14 that the people carrying that are paying
15 somewhat less. And so it gives a negative
16 coefficient.

17 My own view is, obviously, those
18 sources of programming have some value here.
19 So I wouldn't take the regression -- I would
20 take the regression to say the value on that
21 programming is relatively smaller, but I
22 wouldn't say it's literally negative or zero,
23 or even necessarily zero.

24 And that's why it's, in my view,
25 useful to use these things to corroborate

1 something like Bortz. So we see smaller
2 numbers there. We see lower payments there.
3 But I think Bortz survey correctly captures
4 that there's some positive value on that
5 programming.

6 BY MR. LAANE:

7 Q. Geoff, could you go to slide 5,
8 please.

9 So, Dr. Israel, after you've computed
10 those coefficients, you know, then how did you
11 go about determining the allocation shares for
12 each program category?

13 A. All right. So for the categories that
14 are included here that are compensable, so
15 leaving out network as we just discussed, the
16 basic methodology is laid out on this table.
17 It's take the value per minute, that's in
18 column B here, which we were just looking at,
19 and then multiply it by compensable minutes.

20 As you see, in column C, it mentions
21 prorated minutes. So that's covered in my
22 written testimony. But the minutes are
23 prorated based on the subscriber groups that
24 actually receive it. So if only half of the
25 subscribers at a given CSO receive the minutes,

1 that minute would count half as much. But it
2 basically takes the value of the minute times
3 the number of minutes to give an overall value
4 of minutes.

5 And as you can see, as we were just
6 discussing, for Devotional and Canadian, I
7 don't give them negative value. I give them
8 zero under the regression. But it -- so it
9 does that multiplication, it comes up with a
10 value per minutes, and it then converts that in
11 column E into the percentage shares.

12 Q. Okay. Now, we've already heard
13 testimony that not all of the programming on
14 WGNA was compensable in this period. How at
15 all did you address that in the regression?

16 A. Well, so the regression itself --
17 similar to what we just said for network
18 programming, the regression itself includes all
19 the minutes because the regression is capturing
20 the decision that a CSO makes. When a CSO
21 takes WGNA, it's taking all of the minutes.
22 That's what it has on its programming.

23 But, obviously, for purposes of this
24 proceeding, only a subset of those minutes are
25 compensable. So it takes those -- the

1 coefficients that come out of the regression
2 and multiplies them only by the compensable
3 minutes. So, basically, it's taking the
4 implied price but multiplying it only times
5 what you have to pay for.

6 My understanding is the other minutes
7 are covered through other negotiations between
8 CSOs and WGNA. So they would be compensated in
9 another way. So here I just include what is
10 relevant in my understanding to this
11 proceeding.

12 JUDGE STRICKLER: Excuse me,
13 Dr. Israel. In the first column of figures,
14 it's called value of an additional minute. Is
15 additional, in fact, the accurate way to
16 describe that, that is to say as a marginal
17 minute as an economist might say it, or is it
18 more in the nature of an average minute?

19 THE WITNESS: Yeah, I think you're
20 probably right. It's probably more an average
21 -- average minute that you've captured from
22 that content, I think. It's -- it's -- because
23 this is really taking the average value across
24 the different CSOs.

25 And the CSOs take the content in a

1 bucket, right? They can't just literally take
2 one more minute. So I think it's the average
3 sort of incremental minute, but that's an
4 average across a bucket of minutes that you get
5 when you take a signal.

6 JUDGE STRICKLER: Because from an
7 economic point of view, if the value of a
8 marginal minute of sports programming was so
9 much higher than everything else, you would
10 never take the other programming; you would
11 take the one that gives you a greater marginal
12 value and -- on the margin. You would continue
13 to use -- to air sports programming until the
14 marginal values were equal, right?

15 THE WITNESS: Right, or in a -- in a
16 marketplace, there would be negotiations over
17 the prices of these things that would cause the
18 price of sports to be higher to reflect that,
19 which is a --

20 JUDGE STRICKLER: Then you would be
21 worried about the ratio of the price to the
22 revenue that you could produce and try to
23 equalize that ratio until -- and when they were
24 equal --

25 THE WITNESS: Correct.

1 JUDGE STRICKLER: -- then you would
2 have your marketplace result?

3 THE WITNESS: I agree with that
4 generally. I mean, the way I think about these
5 results is the way this particular marketplace
6 works, at least for other types of networks, I
7 work on this stuff a lot, is there is a
8 negotiation between the network and the CSO,
9 right? And so if the CSO had ten times as much
10 value for sports than Program Suppliers, then
11 you would expect the negotiated price to be ten
12 times as high. That's how I interpret these
13 numbers and why they can be used to understand
14 what would happen in a free market.

15 JUDGE STRICKLER: Thank you.

16 BY MR. LAANE:

17 Q. Geoff, if you could go to slide 7,
18 please.

19 And, Dr. Israel, I guess this is -- is
20 this a tabular form of the same comparison we
21 were looking at before between the Bortz
22 results and your regression results?

23 A. Yes.

24 Q. And we can see in the table the Bortz
25 survey covers 2010 through 2013 while your

1 regression uses data from 2010 through 2012.

2 Why doesn't your regression include
3 2013 as well?

4 A. It sort of goes back to the earlier
5 conversation about how early I started working
6 on this stuff. So when I first started working
7 on the regression, the proceeding, as I
8 understand it, was covering 2010 through 2012.
9 It was later extended to include 2013.

10 Because the way I approached this
11 problem throughout was ultimately to -- to see
12 if the regression results corroborated the
13 relative values in the Bortz survey, I
14 ultimately decided I could check 2010 to 2012
15 versus 2010 to 2012 or '13 in Bortz and check
16 the corroboration so I didn't add the
17 additional year.

18 Q. Okay. And have you reviewed the
19 regression study that was submitted by
20 Dr. Crawford in this case?

21 A. I mean, yes, I've read his submitted
22 testimony.

23 Q. Okay. And does Dr. Crawford's
24 regression shed any light on whether adding
25 2013 to your regression likely would have made

1 any material difference?

2 A. Well, Dr. Crawford does include 2013.
3 And I note that his 2013 results are consistent
4 with his 2010 through 2012 results. And
5 they're also consistent, you know, generally
6 consistent with the numbers in the Bortz
7 survey. And generally consistent with my
8 numbers. So it doesn't appear that the
9 addition of 2013, you know, had any material
10 effect.

11 Q. Okay. If you could turn for a minute
12 to page C-5 in Appendix C of your written
13 direct testimony.

14 A. C-5. Yes.

15 Q. And this refers to your main model, as
16 well as sensitivities. What does sensitivities
17 mean?

18 A. I mean, sensitivity is a common term
19 in econometrics to say you have a main model
20 that's your main specification. Often you'll
21 run, you know, a few other versions that have
22 relatively small changes to your main
23 specification, just to -- you know, check to
24 make sure the results are not particularly or
25 overly sensitive to small changes.

1 Q. And, Geoff, could you bring up slide
2 9, please.

3 Dr. Israel, this is Table C-I-3 from
4 page C-6. And does this table show us your
5 sensitivities?

6 A. Yes.

7 Q. So column 1 is, I guess, the main
8 model we've been looking at, and 2, 3, and 4
9 are the sensitivities?

10 A. That's correct.

11 Q. Okay. And we can see for your main
12 model and most of these sensitivities, the
13 coefficients for all the program categories are
14 statistically significant, but column 3, DMA
15 fixed effects sensitivity, there most of them
16 are not statistically significant.

17 Does that have any impact one way or
18 another on your conclusions about your
19 regression?

20 A. No. Just to make sure we're all on
21 the same page here, the little stars -- for
22 those who don't read regression tables every
23 day, the little stars next to the coefficients
24 are indicators of statistical significance.

25 Statistical significance is ultimately

1 a measure of -- sort of a precision of the
2 estimate, how certain we are that the estimate
3 is different from zero.

4 So if you go to column 3 with what's
5 called DMA fixed effects, what that means is
6 that regression has added a separate, sometimes
7 called a dummy variable or an indicator
8 variable. It has added a separate variable for
9 every different DMA.

10 So it's entirely controlling for all
11 of the variation across DMAs. That's adding
12 lots and lots and lots of variables to the
13 model. And when you do that, you're going to
14 get less statistical significance on the
15 coefficients. That's common in a sensitivity
16 analysis like this.

17 What I really check for is, you know,
18 for things like sports, you know, which
19 obviously I focused on to some degree, you
20 know, is the number of the coefficient
21 estimates similar to what we see in the base
22 regression? So it's not something -- you know,
23 you're going to see insignificance when you do
24 a check like this. What you're really looking
25 for is does the actual coefficient change but

1 in a way that would change your conclusion?

2 Q. Okay. Now, if you could just flip
3 over in your notebook to the tab for your
4 rebuttal, Exhibit 1087, and I wanted to ask you
5 about Figure 1 at page -- at page 6.

6 And, Geoff, if you could bring up
7 slide 10, please.

8 And what is this graph showing us,
9 Dr. Israel?

10 A. It just adds the -- Dr. Crawford's
11 regression results, which, obviously, you know,
12 I first saw in his written testimony. So it
13 added those results to the comparison that we
14 showed earlier for my results versus the Bortz
15 survey.

16 And you can see, you know, it's
17 actually quite similar to what we said before.
18 There is close correlation in the rankings.
19 There is close correlation in the values for
20 the top categories. There's an agreement on
21 what the bottom three categories are.

22 So it's -- it's very much confirmatory
23 of the match that I saw between my results and
24 the Bortz survey.

25 Q. Okay. And did you have any role at

1 all in the design or conduct of Dr. Crawford's
2 regression?

3 A. No, not at all.

4 Q. And did he have any involvement in
5 your regression?

6 A. No. We didn't speak about any of this
7 or have any interaction.

8 Q. Geoff, you can take that down now.

9 I wanted to move now to the second
10 study you told us about, your analysis of the
11 payments made by cable networks. And I think
12 you said you referred to those as your cable
13 content analysis.

14 A. Yes.

15 Q. Okay. And, Geoff, could you bring up
16 slide 11, please.

17 Dr. Israel, can you just walk us
18 through this and generally describe the
19 methodology of your cable content analysis?

20 A. Sure. I'll try to make it simple.
21 There's a lot of numbers on this page.

22 So I think easiest is just to walk
23 across the column. So this is looking at TBS
24 and TNT, two cable networks. I mean, to me
25 they are particularly interesting cable

1 networks because they are put -- they put
2 together bundles of content. Obviously, trying
3 to find content that is valuable to -- to CSOs
4 and ultimately subscribers of CSOs. And, you
5 know, their content is -- is -- has some sports
6 content but not that much. And that's what
7 gets summarized.

8 So in column A, you can see the -- the
9 total number of hours of sports content shown
10 on TBS and TNT. So for TBS, it's that 684 next
11 to the JSC number. And then you can see the
12 total number of hours of non-JSC content, just
13 making up the rest of the hours. So you can
14 see that JSC hours make up just under 2 percent
15 of the 1.95 percent of the total hours.

16 Column B then adds a viewing dimension
17 to the numbers. So HHVH -- I think these
18 numbers have been used in previous iterations
19 of the proceeding, but HHVH stands for
20 household viewing hours. Basically, that just
21 weights each of the hours of each program by
22 how many households were watching the program.
23 So it's sort of applying a ratings number to
24 the -- to the programming.

25 And so you can see the number for JSC

1 and non-JSC. And the JSC then makes up about 5
2 and a half percent of viewing. So somewhat
3 more viewing per hour on JSC that brings that
4 viewing number up.

5 But then when you go to the
6 expenditures number, you know, as is well-known
7 from my work in the industry generally, that
8 the cost, the amount being paid for the sports
9 content is substantially higher. So in the
10 case of each TBS and TNT, it's, you know, in
11 the 44 to 45, 46, mid-40s percentage. So you
12 can see 44.4 for TBS and 45.46 for TNT.

13 And, again, that's -- that's
14 consistent with, you know, my general
15 understanding from work in the industry that
16 these networks pay -- you know, nearly half of
17 their programming expenditures are on sports
18 content.

19 And so the bottom line then is just
20 that these networks are paying substantially
21 more per hour of -- of programming or per hour
22 of viewing for sports content than for
23 non-sports content.

24 Q. So, for example, if we look at that
25 figure 40.11 under column D, what does that

1 indicate?

2 A. So it's easier just to walk down the
3 numbers and, you know, get to the 40.1. So the
4 1.5 million that's there, that says that the
5 cost to TBS of an hour, per hour of sports
6 programming, what it pays per hour of sports
7 programming, it shows is 1.5 million.

8 What it pays per hour of non-sports
9 programming, it shows is 37,581. And so the
10 40.11 says an hour of sports programming costs
11 TBS 40 times as much as an hour of non-sports
12 programming.

13 Again, the key here is it's
14 consistent, I think, with what is generally
15 known in the industry, is just, per hour, the
16 sports programming is substantially more
17 expensive.

18 Q. Okay. And can you explain the 13.66
19 in column E?

20 A. So that's the same basic calculation.
21 It's just now it's what it costs per household
22 viewing hour, so not just per hour shown, but
23 per household. So think of it as -- take a
24 household that watches a show for an hour, what
25 are we spending per -- per such household

1 viewing hour?

2 So you can see it's -- it's 84.5 cents
3 for the JSC programming. It's just over 6
4 cents for the non-JSC programming. So it's
5 costing TBS 13.66 times as much.

6 And, again, what's most important to
7 me here is sort of the direction of the
8 effects. You're just -- you're seeing
9 substantially more being spent per hour shown
10 or viewed for sports programming than
11 non-sports programming.

12 Q. Okay. So we've been looking here at
13 payments by -- and not to have you go through
14 them all, but I take it the figures for TNT are
15 then shown in the lower half of the chart?

16 A. That's correct. And they are similar.
17 The ratios are slightly lower, but, again, my
18 key takeaway is, you know, by large amounts,
19 the cost per hour of sports programming is
20 higher.

21 And, again, not surprising, I think
22 this is generally recognized in the industry.

23 Q. Okay. So we've been looking here at
24 payments by cable networks. In paragraph 51 of
25 your written direct testimony at page 30, you

1 discuss the fees that cable systems pay to
2 carry cable networks.

3 And did you help prepare a slide
4 summarizing those data?

5 A. Yes.

6 Q. Okay. Geoff, if you could put up
7 slide 15, please.

8 And please explain these numbers and
9 their significance to your analysis.

10 A. So this is going back to CSOs paying
11 for networks, which is, you know, similar to
12 CSOs paying for the distant signals in this
13 proceeding.

14 So what I wanted to do here was just
15 compare CSOs pay what's called affiliate fees
16 in the industry. That's the cost they pay per
17 subscriber, per month. They have a price like
18 that for basically every cable network.

19 So I wanted to compare the price that
20 they pay for the -- for the cable networks that
21 do have JSC content or don't, just as one more
22 indicator of what these payments look like in
23 the industry.

24 So you can see that the -- you know,
25 and obviously this is -- the networks that

1 carry JSC like TBS and TNT are not carrying
2 just JSC. So it's just an indicator across
3 networks that do or don't carry any of the JSC
4 programming.

5 So you can see that the price per sub
6 per month or the average affiliate fee for the
7 networks that carry the JSC programming is
8 about 75 cents versus about 17 cents for the
9 networks that don't.

10 Q. Okay. Geoff, you can take that down.

11 Dr. Israel, you'll see in addition to
12 the binder with your testimony, there's a big
13 binder up there with some other witnesses'
14 testimony in it?

15 A. I see that.

16 Q. So if you could look in there at
17 Dr. Gray's written rebuttal testimony.

18 A. Okay.

19 Q. And if you could just go to paragraph
20 59 on page 24, and Dr. Gray says, "While CSOs
21 may place a high value on live team sports
22 programming carried by certain cable networks,
23 as described by Dr. Crawford, economic
24 principles suggest they bundle these
25 sports-focused cable networks with other

1 channels, distant signal channels and local
2 broadcast channels, each with little or no
3 sports programming."

4 Does that alter any of your
5 conclusions?

6 A. I mean, no. We know that in the case
7 of what the CSOs are carrying with the distant
8 signals in other programming or what the, you
9 know, cable networks are carrying, they are
10 bundling together different types of content.

11 All of my analysis is designed to, you
12 know, take that bundling as given and see what
13 they're paying or how much they're valuing the
14 different types of content that they're
15 carrying. So the fact that they're bundling
16 together different types of content, you know,
17 doesn't change anything. It's sort of the
18 heart of my analysis to unpack what the value
19 of the pieces of the bundle are.

20 Q. Okay. Then going on to the next
21 paragraph, paragraph 60, Dr. Gray says, "After
22 negotiating programming deals with cable
23 networks carrying live team sports programming,
24 CSOs may then have a sufficient quantity of
25 that type of programming to bundle for its

1 current or potential subscribers. That is live
2 team sports programming would be less valuable
3 to CSOs than other types of programming."

4 Do you agree or disagree with that and
5 why?

6 A. I mean, obviously, the CSOs have more
7 than just distant signals. So they have
8 content of various types from broadcast and
9 cable networks.

10 And so the analysis is that --
11 everything I'm doing in the analysis is looking
12 at the value of the distant signal content
13 conditional on other content that they have.

14 But, obviously, their other content
15 includes, you know, syndicated programs, news
16 programs, religious programs. So there's no
17 basis that I can see to say that because they
18 have other sports, that means the distant
19 signal sports content is worth less or same for
20 other content.

21 You need to do the analysis like I
22 have done to figure out what that value is,
23 conditional on the other programming they have.

24 Q. And just as CSOs have other sources of
25 sports programming, do CSOs also have other

1 sources of, for example, Program Suppliers-type
2 programming?

3 A. Sure. I mean, they have many, many
4 cable and broadcast networks. So they're going
5 to have other syndicated shows. They're going
6 to have other news shows. They're going to
7 have other religious shows.

8 And that's what -- you know, that's
9 the nature of this industry, is CSOs carry
10 large bundles of content. And as we mentioned
11 earlier, the -- you know, the way the free
12 markets in this industry work is they negotiate
13 for content to add to that bundle.

14 So the job here is to see how much the
15 additional content is worth. And that's what
16 the regression and my other analysis does.

17 Q. And if you could turn back to
18 paragraph 31 of Dr. Gray's rebuttal, he does
19 some manipulations to your regression as set
20 forth in what he calls Israel modified royalty
21 shares.

22 Have you reviewed those calculations
23 and the underlying documents that were produced
24 for them?

25 A. Yes.

1 Q. And what did you conclude about
2 Dr. Gray's modifications to your regression?

3 A. So I concluded that they weren't
4 valid. I'm happy to explain why.

5 Q. Please do.

6 A. So, I mean, he makes a couple of
7 changes to -- to the regression. So one of
8 which we talked about earlier is to eliminate
9 all of the CSOs that only pay the minimum
10 payment.

11 That's throwing away a lot of data.
12 So you're not -- you're not learning based on
13 the choices that those systems are making.
14 You're not learning of the relationship between
15 all the control variables based on those
16 systems. You're not -- and you're not able to
17 compare those systems to systems that choose
18 more.

19 So, first of all, it's throwing away
20 lots of information to throw away these systems
21 that are making choices and making that
22 particular payment.

23 JUDGE FEDER: Are there any minimum
24 fee systems in your analysis that did not opt
25 to carry any distant signals?

1 THE WITNESS: I don't -- I know there
2 are some that don't carry all the way to the
3 minimum. There may be some that don't choose
4 to carry any. Yeah.

5 And because the economics of those
6 systems may be somewhat different, I think both
7 Dr. Waldfogel and I put in a dummy variable or
8 an indicated variable for the minimum fee
9 systems to allow for them to have different
10 payments and different economics. So in my
11 view, that's the way I control for that sort of
12 difference as opposed to just dropping them
13 from the analysis.

14 The other change, a major change, that
15 Dr. Gray makes is he changes the nature of the
16 measure of the royalties by a lot. He does a
17 couple things to it.

18 Instead of using the actual royalty
19 payment, he first takes the royalty payment and
20 subtracts off what the minimum fee would have
21 been. And he then takes the logarithm of that
22 difference.

23 My main complaint with that is really
24 the first part, in subtracting off the minimum
25 payment. What's critical about everything

1 we're doing here is you want to be able to look
2 at relative value, what's the -- what's the
3 relative amount that I pay for different types
4 of content.

5 So if you have one system that pays
6 \$100 and carries one type and another system
7 that pays \$200 and carries another type, you
8 would want to see that \$200 is twice as big as
9 \$100. So you can do the relative value.

10 If you subtract off the minimum
11 payment, right -- suppose the minimum payment
12 was 100 -- then that first system would be zero
13 for its new variable and the second system
14 would be 100 for its new variable.

15 Taking the log is kind of a technical
16 thing, but the real issue is when you do that
17 subtraction of the minimum payment and reset
18 where zero is, you mess up all the relative
19 payments that people are making in a way that I
20 think is consequential. You're no longer
21 measuring relative payments. You're measuring
22 something else.

23 And, therefore, I just don't consider
24 that valid when our goal is to measure relative
25 value.

1 BY MR. LAANE:

2 Q. Okay. Switching witnesses on you, if
3 you could turn to Dr. Lisa George's rebuttal
4 report, Exhibit 4007. And have you reviewed
5 the adjustments to your regression that she
6 discusses beginning at page 17 of her rebuttal
7 testimony?

8 A. Yes.

9 Q. Okay. And, first, could you just
10 generally summarize the types of changes she
11 made to your regression?

12 A. I think there are three main
13 categories. She used them -- for Canadian
14 minutes, in particular, she used some different
15 categorization that she said reflected better
16 the actual Canadian programming on Canadian
17 signals. So that's Number 1.

18 Number 2, she -- all those minutes
19 coefficients we saw before, the value of the
20 minutes, she split those up so that there was a
21 value for CSOs inside the Canadian zone or
22 outside the Canadian zone. So she let the
23 value differ across different types of CSOs.

24 And then, third, she -- where I had a
25 single variable measuring the number of local

1 broadcast channels the CSO carried, which I
2 considered one more measure of the size of the
3 CSO, she split that out into a large number of
4 different counts of different types of local
5 signals.

6 Q. And focusing on the first change you
7 mentioned, about the categorization of the
8 minutes, if you use Dr. George's
9 categorizations but keep your model, and after
10 you got her rebuttal, did you take a look to
11 see what would happen if you took her
12 categorizations but ran them through your
13 model?

14 A. Yes, I did.

15 Q. And what impact does that have on your
16 results?

17 MR. MacLEAN: Objection. Your Honor,
18 this is a new analysis that hasn't been offered
19 in written testimony.

20 MR. LAANE: He's responding orally to
21 rebuttal which had attacked his analysis on
22 this basis. He's not going to put in any new
23 study or quantitative figures, but just explain
24 what he found was the impact of accepting that
25 portion of her criticism that he should have

1 used the Canadians' categorizations.

2 JUDGE BARNETT: He may do that.

3 Overruled.

4 THE WITNESS: So it has only a very
5 small effect. If you use the categorizations
6 that Dr. George provided and then, you know,
7 update the regression using those
8 categorizations, none of the coefficients or
9 the implied shares change by much at all, maybe
10 a percentage point.

11 BY MR. LAANE:

12 Q. But adopting her other changes to your
13 model does change the results?

14 A. Yes.

15 Q. Okay. Do you have an opinion on
16 whether those changes to your model were
17 economically appropriate?

18 A. I mean, yes, I find them
19 inappropriate, in particular, the -- well, I
20 can mention both, but the main one is the
21 addition of many control variables for
22 different types of local stations, different
23 local content.

24 I mean, the reason you add a control
25 variable would be that you don't think that

1 source of variation should be used to measure
2 the valuation. So it's certainly true that
3 different CSOs that have different local
4 signals available to them make different
5 choices about what distant signals to carry.

6 And that -- those different choices
7 reflect their valuations on the distant
8 signals. But that's an economically valid
9 source of differences in the decisions that
10 systems are making.

11 So it's not something that you should
12 control away or you're throwing away variation
13 that's relevant. I mean, those are valid
14 sources.

15 The types of control variables that I
16 would include are things like about the size of
17 the system, because the size of the system is a
18 totally separate basis for why royalties get
19 higher. Controlling for size, I want to see
20 all of the differences in the distant signal
21 choices that different CSOs make, and I want to
22 use that in my analysis.

23 And by controlling for it, you're not
24 letting the regression rely on that interesting
25 source of variation.

1 She also split the minutes up, the
2 values up into inside the Canadian zone and
3 outside the Canadian zone. I mean, ultimately
4 what matters is the overall average value, so I
5 don't see a reason to do that, but really my
6 main concern is by adding these controls, she
7 is eliminating important variation that we can
8 use to learn about the valuation on the
9 signals.

10 Q. Okay. I'd like to go back now to your
11 written rebuttal testimony, so back to the
12 smaller binder.

13 A. Okay.

14 Q. Exhibit 1087. And you address several
15 witnesses and several issues. So in the
16 interest of time, I just want to focus on a few
17 areas and leave the rest to your written
18 testimony.

19 First, if you could turn to page 16,
20 you discuss -- or you state at paragraph 34 --
21 well, first, you're discussing generally there
22 Dr. Gray's computation of what he calls volume,
23 correct?

24 A. That's right.

25 Q. Okay. And you state that "Gray's

1 Table 1 is flawed and misleading, because it
2 does not account for the number of CSOs that
3 receive each distant signal, let alone the
4 number of subscribers to whom the programming
5 is retransmitted."

6 Could you please explain that for us?

7 A. It's basically when he's computing
8 volume, it's just volume of minutes. So if a
9 minute of a given type of programming is
10 retransmitted by any CSO to any number of
11 subscribers, be it 5 or 5 million, that counts
12 as one minute.

13 And so he's just taking shares of
14 those minutes, but a minute is a minute no
15 matter how many people actually have access to
16 that minute. And so that's, to me, not a
17 meaningful measure of sort of how widely
18 distributed or how -- you know, how important
19 that minute is.

20 Q. Okay. And if you could look at Table
21 4 on page 18.

22 And, Geoff, if you could bring up
23 slide 17, please.

24 So what are you comparing here and
25 why, Dr. Israel?

1 A. So this is Dr. Gray's volume measure
2 that we just discussed, where a minute is just
3 a minute, versus Dr. Crawford's modification of
4 that, where Dr. Crawford weighted each minute
5 by the number of -- really the number of
6 subscribers who would have received that minute
7 on their cable system.

8 And so you can see it makes -- it's --
9 it makes a large difference when you account
10 for the number of subscribers. So the sports
11 share, for example, goes up by roughly ten
12 times when you account for the fact that, you
13 know, sports minutes in WGN, for example,
14 being, you know, sent to systems that have many
15 more subscribers.

16 Q. Now, if you could turn to paragraph 65
17 of Dr. Gray's rebuttal.

18 A. Back to his rebuttal?

19 Q. Yes. Sorry about that.

20 A. It's okay. Okay.

21 Q. Paragraph 65.

22 A. Um-hum. Sorry. There's just a lot of
23 pages in this binder. Yep.

24 Q. Okay. And we can see here he's
25 comparing what he says are the number of

1 minutes of live team sports and other sports in
2 his data set.

3 Did he weight those numbers by the
4 number of distant subscribers receiving the
5 programming?

6 A. No.

7 Q. If you do weight by distant
8 subscribers, what impact does that have on the
9 ratio of live team sports minutes to the other
10 sports minutes in his data set?

11 A. I mean, it makes an enormous
12 difference. The ratio here -- here I think it
13 sort of looks like about 30 percent or so other
14 sports. And if you actually weight by
15 subscribers similar to what's in the table on
16 the screen, I think that falls below 5 percent
17 for other sports.

18 Q. Now not just limited to sports but as
19 a general matter, even if one does adjust for
20 the number of distant subscribers, is the
21 volume of retransmitted minutes a sound basis
22 for allocating relative value?

23 A. No, just as a matter of economics,
24 minutes are kind of a unit of how many of the
25 product there are. You obviously need to

1 multiply that by some measure of price or value
2 to be able to make a comparison.

3 Q. Then going to page 21 of your rebuttal
4 testimony, you address Dr. Dr. Gray's analysis
5 of what he describes as viewing. And have you
6 reviewed the written testimony of Dr. William
7 Wecker and Gary Harvey critiquing Dr. Gray's
8 viewing analysis?

9 A. Yes.

10 Q. Okay. Just putting to one side the
11 methodological issues that Dr. Wecker and
12 Mr. Harvey raised about the Gray methodology,
13 do you have a view on whether viewing is an
14 appropriate way to measure relative value in
15 these proceedings?

16 A. Yeah. I mean, in my view, it's not.
17 I mean, viewing is one characteristic of
18 programming. You know, my experience in the
19 industry, you know, sometimes people look at
20 viewing for certain purposes, but I think it's
21 generally known and accepted that viewing
22 doesn't capture value.

23 There's a couple reasons for that.
24 One is the buyers of the programming here are
25 CSOs. Right? They're putting together bundles

1 of programming, and so viewing is not a --
2 something a CSO does. It's something
3 subscribers do. But viewing by its nature
4 doesn't capture the value the CSOs put on
5 diversified programming and putting together
6 bundles of different programs.

7 Even from the point of view of the
8 subscribers, you know, viewing is a choice of
9 what to watch. It doesn't reflect the
10 intensity of the preference. So it doesn't --
11 you know, somebody might watch one program over
12 another because it's slightly more valuable to
13 them, and in another case it might be massively
14 more valuable to them. So by just counting up
15 viewing, you're not capturing even at the
16 subscriber level anything like a willingness to
17 pay or a monetary value on the content.

18 Q. Now I want I talk to turn briefly to
19 Dr. Stec. And, of course, we have both a Stec
20 and Steckel. So Stec is the one I'm referring
21 to here.

22 And did you see Dr. Stec's assertion
23 that the Bortz survey measures willingness to
24 pay and that, in his view, relative willingness
25 to pay does not equal relative market value?

1 A. I did.

2 Q. Okay. And if we assume that what the
3 Bortz survey measures is CSOs' willingness to
4 pay, can you tell us whether or not in your
5 opinion that would be useful in assessing
6 relative market value?

7 A. I think it's quite useful. I think
8 it's the right question in this industry. A
9 little discussion of this before. I mean, if I
10 think about how this industry functions, we
11 have nice analogies, right?

12 I mean, there's lots of cable networks
13 and other broadcast networks that are
14 negotiated over and paid for in a free market.
15 And the way that that market works is that
16 the -- in every case that I know of, the
17 network or group of networks in some cases and
18 the CSO negotiate over a price.

19 And so Dr. Stec does an analysis where
20 he looks -- you know, he sort of looks at a
21 market-wide supply-and-demand curve and says
22 what would the market price be? That might be
23 right in some other industries, but here we
24 know that prices are set by these negotiations
25 and -- in between networks and CSOs.

1 And in those negotiations, standard
2 economics tells us they're negotiating to
3 divide up the value that the network creates
4 for the CSO. And so, you know, the willingness
5 to pay or sort of the maximum value that the
6 network puts on -- or the CSO puts on that
7 network, you know, is the key driver in
8 standard economic analysis of negotiations.

9 So the relative willingness to pay, in
10 my mind, is the key driver of what would be the
11 relative negotiated price for different types
12 of content.

13 Q. Okay. I now want to turn briefly to
14 the Horowitz survey.

15 And, Geoff, if you could bring up
16 slide 18, please.

17 At paragraph 68 of your rebuttal, you
18 state that the actual marketplace evidence
19 supports use of the Bortz survey, not the
20 Horowitz survey, and rejects Mr. Horowitz's
21 claim that not including a separate "other
22 sports" category invalidates the Bortz results.

23 Could you please explain that opinion
24 for us.

25 A. Sure. So, I mean, the first part, the

1 corroboration of the surveys relative to each
2 other. I mean, this slide has what the Israel
3 and Crawford regressions find relative to what
4 the Bortz and Horowitz surveys find.

5 And I think it's clear that the -- you
6 know, going back to what the regressions do,
7 which is sort of match overall correlations in
8 the values and then, you know, match rankings
9 of the values, I think it's clear that the
10 regressions better match Bortz than Horowitz.

11 You can see, you know, a major
12 difference between the Bortz and Horowitz
13 results is they basically flip around the
14 shares put on sports and Program Suppliers.
15 They change the rankings and basically reverse
16 the two.

17 Both the Israel and Crawford
18 regression results, you know, are much closer
19 to Bortz and find sports -- similar sports
20 shares to Bortz and find that sports has
21 substantially more value than Program
22 Suppliers' content.

23 And then if you go to, you know, the
24 next two down, again you see that the Israel
25 and Crawford results match the ranking of the

1 Bortz survey and not the Horowitz survey.

2 And I think the other part of what you
3 asked was about the "other sports" category.

4 And as I understand it, the criticism that has
5 been made is that the Bortz sports category
6 might include -- people might at least think it
7 includes other sports, not just JSC, and maybe
8 that inflates the value in the Bortz survey.

9 But, in fact, contrary to that, the
10 Israel and Crawford regressions both correctly
11 put all of the other sports content into its
12 appropriate category. So in my regression, for
13 example, other sports, goes in Program
14 Suppliers or CTV or wherever it should go.

15 So I don't have any -- the issue of
16 putting "other sports" in with sports. And yet
17 my values, and my sports value in particular,
18 very closely matches Bortz, indicating that's
19 not driving his results.

20 Q. All right. Thank you.

21 Your rebuttal also discusses
22 Mr. Mansell and, again in the interest of time,
23 I'll leave most of that to the written
24 testimony. But I did want to ask you a little
25 bit about his assertions about the migration of

1 sports.

2 And, Geoff, if you could put up slide
3 19, please.

4 And, Dr. Israel, based on your review
5 as compared to the last time period the Judges
6 considered, '04-'05, had there, in fact, been a
7 decline in the relative amount of live team
8 sports on distant signals as compared with the
9 2010 through '13 period?

10 A. No. I mean, this -- this table that's
11 on the page or on the screen now compares the
12 Crawford volumes we talked about a minute ago
13 with a similar calculation that was done in
14 2004-2005. So both of them are looking at
15 volume shares weighted by subscribers
16 appropriately for compensable minutes.

17 And you can see that if -- you know,
18 in fact, as it turns out, within the distant
19 signals in particular, the volume share of
20 sports has gone up a fair bit over the two time
21 periods.

22 Q. What if we were to assume just
23 hypothetically that there had been a decline in
24 the relative amount of sports? Would that
25 impact the reliability of your regression or

1 the Crawford regression?

2 A. No, that -- no, I don't see how it
3 could. Again, volume is not value. And,
4 importantly, whatever -- you know, whatever
5 changes in the marketplace are happening over
6 time are, you know, captured in the data.

7 So the Bortz survey is asking people
8 as of 2010 through 2013. The Israel and
9 Crawford regressions are using data from that
10 same time period. So the whole purpose of
11 doing the empirical analysis, again, is to
12 capture whatever changes have happened in the
13 marketplace.

14 So the fact that there have been such
15 changes wouldn't invalidate the studies.

16 Q. Okay. Now I want to turn to
17 Dr. Steckel, and in the interest of time again,
18 I'll leave most of it to your written
19 testimony, but I did want to ask you about your
20 statement at paragraph 50 of your rebuttal that
21 you disagree with Dr. Steckel's assertion that
22 one should focus on the opinions of cable
23 subscribers rather than the opinions of CSOs.

24 And can you explain why you disagree
25 with Dr. Steckel on that?

1 A. I mean, CSOs are the buyers of the
2 content. So if you want to determine the value
3 of a product, and you want to do so with a
4 survey or your regression, you look at the
5 behavior or the answers of the buyers of the
6 content. And here that's the CSO.

7 Part of what they're doing is
8 reflecting what their subscribers value, but
9 ultimately what matters is the CSOs'
10 willingness to pay, given that -- you know,
11 given all the factors that determine the value
12 they place on the content.

13 Q. Okay. And Dr. Steckel makes various
14 criticisms of the Bortz survey. If he were
15 correct about those criticisms, would you
16 expect the survey results to align with actual
17 marketplace evidence?

18 A. No. I mean, in my view, economists
19 often ask questions about surveys and surveys
20 are very valuable, but it's important to match
21 the surveys to marketplace data. And that's --
22 you know, I think the best answer in my view to
23 any question somebody raises about a survey is
24 to go see if the survey matches what's in the
25 marketplace. That's, in my view, sort of the

1 fundamental reason to do what I've done.

2 JUDGE STRICKLER: Does it work the
3 other way around too, that if you look at
4 actual marketplace results through a regression
5 analysis, that you should check those results
6 against the survey to make it more reliable?

7 THE WITNESS: I mean, I think it's
8 fair. I mean, when I say corroborate, I think
9 it's fair to see the extent to which they match
10 one another.

11 I mean, in -- in this case, you know,
12 my view is that the Bortz survey goes directly
13 to the question that we want to answer with a
14 continuous scale that lets people answer it and
15 give their actual relative value, whereas the
16 regression is drawing on kind of zero/one
17 choices that are a little more discrete and
18 maybe not -- don't let you quite fine-tune the
19 values as much.

20 So in my view, the Bortz survey sort
21 of gets at the heart of the matter and the
22 regression is more of a check just because of
23 the nature of the data. So that's how I think
24 about it. But I would agree that the match in
25 each direction is relevant.

1 JUDGE STRICKLER: Thank you.

2 BY MR. LAANE:

3 Q. And, finally, I just wanted to make
4 sure we were clear on one thing about minimum
5 fee systems. So you did include minimum fee
6 systems in the regression if the -- if that
7 system carried at least a distant signal; is
8 that right?

9 A. Right. That would be correct. So
10 then it would have a distant signal and it
11 would have some minutes to show up in the
12 regression.

13 Q. Okay. But a minimum fee system that
14 carried no distant signals at all was excluded
15 from the data set for the regression; is that
16 right?

17 A. Right. I mean, it would have no
18 minutes of the any of the types of content. So
19 it was a question before, and maybe I
20 misunderstood it, I was thinking of whether
21 there were any such systems, but the regression
22 itself, which is actually looking at the number
23 of minutes, obviously needs at least one signal
24 so that there are some minutes.

25 Q. Okay.

1 MR. LAANE: Thank you, Dr. Israel. I
2 have nothing further at this time.

3 CROSS-EXAMINATION

4 BY MR. CHO:

5 Q. Good morning, Dr. Israel.

6 A. Good morning.

7 Q. My name is Dustin Cho and I represent
8 the Public Television Claimants.

9 Dr. Israel, I'm going to start by
10 talking about the shares that you calculated
11 based on your regression analysis.

12 A. Okay.

13 Q. Let me see if we can get our slides
14 up. There we go.

15 So it's your testimony that your
16 regression shares corroborate the Bortz survey
17 share for sports, right?

18 A. Yes. I'm -- generally, I think the
19 regression -- the regression results
20 corroborate the Bortz survey.

21 Q. In particular, for sports?

22 A. Certainly for sports. But my overall
23 conclusion is that these results -- you know,
24 given my experience in economics, that these
25 sorts of regression results are a close match

1 for what the -- for the Bortz survey.

2 Q. Well, in fact, your regressions share
3 for sports is within one percentage point, I
4 think, of the average Bortz share for sports;
5 is that right?

6 A. Yes.

7 Q. And your regression share for the
8 Commercial Television Claimants is within 2
9 percentage points of the average Bortz share?

10 A. I don't remember the numbers, but that
11 sounds right.

12 Q. Okay.

13 A. I mean, it certainly looked -- the
14 bars are very close on what we have in front of
15 us.

16 Q. But there's a bigger difference for
17 the other parties between their Bortz shares
18 and their shares according to your regression,
19 right?

20 A. Yes.

21 Q. You didn't report any confidence
22 intervals for the shares that you calculated
23 based on your regressions, did you?

24 A. I don't believe I included confidence
25 intervals for the shares as such. I certainly

1 included standard errors for the coefficients.
2 So one could adjust those to compute confidence
3 intervals.

4 Q. Okay. But you noted in your direct
5 testimony that only sports and the Commercial
6 Television shares, according to your
7 regression, were within the range of annual
8 results of the Bortz survey, right?

9 A. I think that's right. I think -- I
10 think what I said was that for Program
11 Suppliers, it was -- you know, you can see it
12 here now that you put it up -- very near the
13 bottom end of the range, but the other two were
14 within the range, yeah.

15 Q. And you're just comparing, you know,
16 over the four years of Bortz shares, what the
17 low was, what the high was, and then whether
18 your regression estimate for that share fell in
19 that range?

20 A. That's what I'm doing here, yes.

21 Q. So your regression gives Program
22 Suppliers more than 4 percentage points less
23 than the average Bortz survey?

24 A. Yes. It's just over 4 percent below,
25 based on the regression shares.

1 Q. And your regression's average share
2 for Program Suppliers is lower than the lowest
3 share that it received in any of the years of
4 the Bortz survey?

5 A. Right, it's slightly lower. Again, my
6 general view, given what I've seen from
7 regressions in surveys, is that these numbers
8 are -- are matching quite well. But, yes, I
9 agree with that.

10 Q. And your regression suggests that
11 Devotional programming has very little if any
12 value to cable operators?

13 A. I mean, again, I would say that my
14 regression results generally corroborate Bortz
15 and finds -- the regression itself finds a low
16 share for Devotional. I'm not claiming the
17 regression indicates no value for Devotional.
18 But, certainly, the regression finds a low
19 share for Devotional, zero.

20 Q. Well, the Bortz survey, on the other
21 hand, gives an average share to Devotionals of
22 nearly 5 percent?

23 A. Yes.

24 Q. And then there's the biggest
25 difference on this chart, Public Television.

1 The share you calculated for Public Television
2 is more than 8 percentage points greater than
3 the Bortz share for Public Television; is that
4 right?

5 A. More relevant -- than what comes out
6 of the Bortz survey. I understand there's
7 discussions and Mr. Trautman includes some
8 adjustment for Public Television that I haven't
9 been that close to. I think that adjusts his
10 number up some. But, yes, it's a higher number
11 than comes out of the survey.

12 Q. Well, in fact, your regression's
13 valuation of Public Television programming is
14 more than two and a half times greater than the
15 Bortz share for Public Television, isn't it?

16 A. It certainly is, again, that much
17 higher for what's in the survey. I think it
18 gets somewhat closer after the adjustment
19 Mr. Trautman talks about. I don't remember the
20 exact number there.

21 Q. Okay. Well, here's what you said on
22 this issue: "For the three lower ranked
23 categories, programming categories (Public
24 Television, Devotional, and Canadian), my
25 regression model agrees with the Bortz Survey

1 on the relative share of the sum of public
2 broadcasting, plus Devotional, plus Canadian
3 categories, a total of roughly 9 to
4 13 percent."

5 Is that right?

6 A. Yes, that's -- that was one way I
7 looked at how well it was matching to the lower
8 valued categories. As I mentioned before, in
9 my experience, regressions of this type often
10 struggle to match at the lower end. And so I
11 wanted to look at various metrics of how well
12 it was doing.

13 Q. Did the Bortz survey ask cable
14 operators to value the sum of Public
15 Television, Devotional, and Canadian
16 programming or did the Bortz survey ask
17 respondents to provide valuations for each of
18 those categories separately?

19 A. It asked for each category.

20 Q. And how about your regression? Did it
21 lump together all three of those categories of
22 programming or did it analyze the value of
23 those three categories separately?

24 A. No, the regression measured each one
25 separately.

1 Q. So what's the significance of your
2 observation here that your regression model
3 agrees with the Bortz survey on the relative
4 share of the sum of those three categories?

5 A. I mean, frankly, I almost think about
6 it in reverse. I mean, it's saying if it
7 matches the sum of those three, then it matches
8 the sum of the top three.

9 And so I was just basically looking at
10 whether it sort of got the overall split right
11 among the top categories and the lower ranked
12 categories. It was really just one metric to
13 see how it was doing.

14 And what I largely think about, is it
15 generally getting the amount that goes to the
16 higher ranked categories right? Because,
17 again, in my experience, that's what
18 regressions of this type are best at.

19 Q. Well, another question about your
20 statement here. Doesn't your regression
21 indicate that Public Television's share alone
22 is more than 3 percentage points more than the
23 Bortz survey's average shares for all three of
24 these categories combined?

25 A. Again, that's true, just for the sum,

1 taking the Bortz survey directly. Again, I
2 understand there was some adjustment made to
3 these shares, and I think that makes the sum
4 quite close. But, yes, I agree with your
5 statement for the survey without the
6 adjustment.

7 Q. Well, is it fair to say that your
8 regression contradicts the Bortz survey as to
9 the relative value of Public Television
10 programming?

11 A. I don't see it as a contradiction. My
12 view of these regressions is they can generally
13 corroborate overall rankings and they do better
14 at the high end. I would agree it gets a
15 higher number for Public Television, but I
16 consider this, the correlation that we're
17 seeing here, strikingly good from my economic
18 experience.

19 So there's differences in Public
20 Television is higher, but I don't consider
21 these results a contradiction of the Bortz
22 survey.

23 JUDGE STRICKLER: When you say "these
24 results," you mean overall or specifically to
25 Public Television?

1 THE WITNESS: I mean overall. I mean,
2 I agree it's higher for Public Television, no
3 question about it. My view is that regressions
4 like this are best at sort of overall
5 corroboration and best at the stuff that's
6 carried more often.

7 So I consider them to be a
8 corroboration of the overall findings for
9 Bortz. I certainly agree it gets a higher
10 number for Public Television.

11 JUDGE STRICKLER: Would you say that
12 your regression fails to confirm the Bortz
13 survey results as it relates to Public
14 Television before the additional adjustments
15 are made to the Bortz survey?

16 THE WITNESS: I think I would say the
17 regression indicates a higher value for Public
18 Television than for Bortz. It certainly
19 supports, I think, some adjustment for Bortz.

20 My view is that we shouldn't use the
21 exact number from the regression at the low
22 end, but I think it's fair to say that my
23 regression indicates a higher value than -- for
24 Public Television than would be in the raw
25 Bortz data.

1 JUDGE STRICKLER: Thank you.

2 BY MR. CHO:

3 Q. So did you -- when you were deciding
4 whether or not your regression confirms the
5 Bortz survey results, did you look at any
6 adjustment to the Bortz survey or were you
7 comparing it with the Bortz survey as
8 Mr. Trautman presented it?

9 A. I mean, I think I've done both over
10 the course of my analysis. Certainly when I
11 first looked at the numbers, I saw the Bortz
12 survey numbers absent any adjustment. But
13 during the course of the testimonies, I've seen
14 that there were adjustments that were made, so
15 I considered that as well.

16 Q. You didn't discuss that in any of your
17 testimony, did you?

18 A. No, that's fair. I mean, there has
19 been ongoing discussions in rebuttals and
20 things, so I've continued to review what people
21 have done, but it's fair that my initial and
22 most of my comparisons in the testimony were of
23 the Bortz numbers themselves.

24 Q. So along those lines, I want to ask
25 you what you meant by these two sentences in

1 your written rebuttal testimony. You wrote,
2 "As noted above, my empirical analysis of
3 marketplace outcomes supports the results of
4 the Bortz surveys for royalty allocation. As
5 such, I support the results of the 2010-13
6 Bortz surveys for the royalty allocation to all
7 parties, including Devotional Claimants."

8 Why do you support using the Bortz
9 survey shares for all parties, including
10 Devotional Claimants, when your empirical
11 analysis and marketplace outcomes does not
12 support the results of the Bortz surveys for
13 all of the parties individually?

14 A. Again, I think the appropriate way to
15 use the regression like this is to -- overall,
16 I think the right question is, overall, does it
17 indicate that the survey results are on point
18 or generally correlated?

19 And it was given -- as I mentioned in
20 an earlier answer, the empirical data we have
21 in this case is quite good, but it's -- you
22 know, it requires sort of discrete zero/one
23 choices between different types of content,
24 whereas the Bortz survey lets people make more
25 fine-tuned indications of their value.

1 So in my mind, the question is the
2 survey is asking the right question. I just
3 want on to make sure the survey is not missing
4 marketplace outcomes generally. And when I
5 find that it's not, that the correlation is
6 quite good in my experience, then that says I
7 have faith in the survey and, therefore, I
8 would rely on the survey because I think it's
9 going right to the relevant question.

10 Q. How far apart -- for what you call the
11 smaller categories, how far apart would your
12 estimate from a regression have to be from the
13 Bortz survey share for you to feel that it was
14 not corroborating that party's share?

15 A. I don't have an exact number. I list
16 in my reports the way I looked at that. I
17 think, as I said, it's relevant that it's
18 getting the overall top categories quite close.
19 It's getting the rankings quite close.

20 If the rankings were different more
21 than one time, say, or even the rankings were
22 different or if the -- you know, if it didn't
23 have, basically, the right overall value for
24 the top categories, I'd start to worry more.

25 But because, in my experience,

1 regressions of this type don't do as well in
2 lower valued products that aren't consumed or
3 valued as high, I generally wouldn't discount
4 the survey based on missing at the lower end,
5 as long as it's getting the overall rankings
6 right and getting the splits right at the high
7 end.

8 JUDGE STRICKLER: If the sentence --
9 say that you wrote -- the second sentence
10 that's up on the screen there, instead of the
11 phrase "all parties," but it had said the
12 royalty allocation to each party, including
13 Devotional Claimants, would you still stand by
14 that sentence if you made that change?

15 THE WITNESS: I would stand by the
16 sentence. I do think, and as I've continued to
17 review the testimony and understand the details
18 of the Bortz adjustment and the fact that the
19 survey, as I understand it, wasn't sent to CSOs
20 that only carried public, I think an adjustment
21 to public is supported by the -- especially
22 given that the survey people themselves are
23 saying an adjustment should be made, I think
24 the regression supports the adjustment.

25 JUDGE STRICKLER: If we had to

1 choose --

2 THE WITNESS: But --

3 JUDGE STRICKLER: I'm sorry.

4 THE WITNESS: No, no.

5 JUDGE STRICKLER: If we had to choose
6 between the adjustment that was made to the
7 Bortz survey and your regression results as it
8 relates particularly to the category of Public
9 Television, which one would you say is more
10 reliable?

11 THE WITNESS: I mean, I would tend to
12 favor an adjustment that works off the survey,
13 just because I've seen these sorts of
14 regression results in other settings at the low
15 value, you know, have some difficulty matching
16 exactly the numbers.

17 My view of the regressions -- and
18 others may have other views -- is they should
19 corroborate the overall rankings and the
20 general patterns. I don't think these
21 regressions are designed -- because of the sort
22 of lumpiness of the decisions that people can
23 make, I don't think they're designed to be plus
24 or minus 2 or 3 percent on the valuations.

25 I think they're designed to indicate

1 whether the surveys are generally reliable.

2 JUDGE STRICKLER: So you think your
3 regression does not corroborate the adjustment
4 to the Bortz survey as it relates to Public
5 Television and, therefore, we should rely on
6 the Bortz survey?

7 THE WITNESS: I think it corroborates
8 that an adjustment is appropriate. I think
9 it's consistent with saying public is -- you
10 know, especially now that I've heard all of the
11 testimony, that public seems low in the overall
12 survey. But I -- so I think it corroborates
13 the adjustment. I just wouldn't put forward
14 the regression as giving us the exact number of
15 the adjustment.

16 JUDGE STRICKLER: You think the more
17 accurate adjustment is the adjustment that was
18 made to the Bortz survey in the survey work,
19 rather than in the regression work you used?

20 THE WITNESS: Just to be clear, I have
21 not done a detailed evaluation of the various
22 adjustments that were made. So I don't want my
23 testimony to be that I know the exact
24 adjustment.

25 But I think an adjustment to the

1 survey to reflect who the survey was sent to is
2 consistent with my view that the survey is
3 going to the right exact question and can give
4 a more refined, precise number than the
5 regression.

6 JUDGE STRICKLER: Thank you.

7 BY MR. CHO:

8 Q. In your rebuttal testimony you write,
9 "It is also notable that the Bortz surveys, my
10 regression analysis, and the Crawford
11 regression analysis all value Sports within
12 roughly 3 percentage points of each other,
13 while the Horowitz valuation (30 percent) is 5
14 percentage points below the lowest, and 8
15 percentage points below the highest valuation
16 from the other studies."

17 Right?

18 A. Yes.

19 Q. Now, if I swap out a few words in that
20 sentence, is it also notable in your opinion
21 that the Horowitz surveys, your regression
22 analysis, and the Crawford regression analysis
23 all value Public Television within roughly 4
24 percentage points of each other, while the
25 Bortz valuation, at 5.1 percent, is 8

1 percentage points below the lowest and 12
2 percentage points below the highest valuation
3 from the other studies?

4 A. I mean, I think I'd say a couple
5 things. Again, I certainly think that's --
6 that comparison supports an adjustment to
7 Bortz. I mean, the reason I made the statement
8 that I did was that I understood much -- or two
9 reasons.

10 One is, again, I think the regressions
11 do their best work at the high end when you
12 have content that's got more value. That's
13 what I've seen in my experience.

14 But, two, I understood a lot of the
15 debate between Horowitz and Bortz to be about
16 this other sports category and what effect it
17 had. And so the sports comparison seemed
18 particularly important.

19 But, again, I think that it's fair to
20 say that the regressions are supporting some
21 adjustment upward for public.

22 Q. So you said you haven't looked closely
23 at the adjustments that have been proposed with
24 respect to Public Television for the Bortz
25 survey; is that right?

1 A. I haven't looked at the
2 quantification. I understand they have to do
3 with the fact that the Bortz survey was not
4 sent, I think, to systems that only carried
5 public.

6 So I -- and that, therefore, there
7 would need to be an adjustment up. But I have
8 not -- my understanding is there are different
9 views on what that adjustment should be, and I
10 have not compared them in that detail.

11 Q. Well, would it surprise you that
12 Mr. Trautman, who has testified about a couple
13 of different types of adjustments, said all of
14 them would fall below even the low end of the
15 Horowitz, Israel, and Crawford shares for
16 Public Television?

17 A. I think I recall seeing that.

18 Q. In your opinion, do your regression
19 and Dr. Crawford's regression and the Horowitz
20 survey corroborate each other with respect to
21 Public Television's share?

22 A. Again, I mean, my view for the
23 corroboration question is it's -- it's an
24 overall correlation and ranking. And so I -- I
25 really, particularly at the low end, don't

1 think of corroborating category by category.

2 I think of asking the question does
3 the survey seem to produce results that are in
4 line with marketplace outcomes?

5 Q. I guess I want to pull that apart. So
6 you said you don't think of the corroborating
7 category by category, but didn't you do exactly
8 that with respect to sports?

9 A. I certainly look at in more detail at
10 the valuations at the higher end and, again,
11 looked at sports because there was this debate
12 about other sports.

13 But I -- and I think the correct
14 overall way to look at the survey is whether it
15 matches the rankings, whether it generally
16 correlates with the values given, and then if
17 you're going to dive in in more detail, you
18 know, regressions tend to do better at the high
19 end, and so I would -- I would put more
20 emphasis on that.

21 Q. Okay. We're at a good stopping point.
22 Oh --

23 JUDGE STRICKLER: You say regressions
24 do a better job at the high end. What's your
25 cutoff for the high end for this particular

1 regression?

2 THE WITNESS: I mean, I've tended to
3 think of the top three categories and the
4 bottom three categories.

5 JUDGE STRICKLER: Thank you.

6 MR. CHO: We're at a good stopping
7 point if you'd like to take a break or I can
8 keep going.

9 JUDGE BARNETT: How much more do you
10 have?

11 MR. CHO: I would guess 45 minutes.

12 JUDGE BARNETT: We'll go ahead and
13 take our morning recess, 15 minutes.

14 (A recess was taken at 10:28 a.m.,
15 after which the trial resumed at 10:47 a.m.)

16 JUDGE BARNETT: Please be seated. Mr.
17 Cho?

18 MR. CHO: Your Honor, one piece of
19 housekeeping business.

20 During the break we agreed, I believe
21 all the parties agreed to admit five exhibits
22 that were filed by the Joint Sports Claimants
23 on Friday: Exhibits 1112, 1113, 1114, 1115,
24 and 1118.

25 JUDGE BARNETT: Thank you. 1112

1 through 1115 inclusive are admitted, and 1118
2 is admitted.

3 (Exhibit Numbers 1112, 1113, 1114,
4 1115 and 1118 were marked and received into
5 evidence.)

6 BY MR. CHO:

7 Q. Thank you. So before the break, Dr.
8 Israel, we were talking about how your
9 regression may corroborate as to the three
10 largest shares; is that right?

11 A. I think it matches them well. So
12 that's one -- one sign that it corroborates the
13 survey results.

14 Q. And in your direct testimony you talk
15 about it confirming the rank order of the top
16 four and the royalty share allocation of the
17 top three.

18 Why did you look at top four for the
19 rank order and royalty share allocation for
20 only the top three?

21 A. I mean, I wasn't trying to just look
22 at one or the other. I was just summarizing
23 various ways that I -- that I concluded that
24 the regression results corroborated the survey.

25 Q. So it is your opinion that the Public

1 Television category is not one of the larger
2 categories that you should look to to see
3 whether or not the regression that you ran
4 corroborates the Bortz survey?

5 A. I mean, again, it is my opinion that I
6 should look at the overall set of results to
7 see if they generally match what's in the Bortz
8 survey.

9 It doesn't surprise me that, for some
10 of the smaller ones, some of the differences
11 are bigger.

12 But really my overall opinion is that,
13 you know, in my professional experience, this
14 sort of match between a regression and a survey
15 is -- is quite good relative to what I have
16 almost ever seen.

17 Q. I think you keep using the word
18 smaller or larger. And I think it is important
19 to understand what you mean by that.

20 So what are you looking to when you
21 decide whether or not Public Television belongs
22 in the larger category that you should look to
23 or the smaller category that you shouldn't look
24 to?

25 A. Again, I didn't make any sort of a

1 priori decision about what was large or what
2 was small. I looked at the overall set of
3 regression results and I asked myself: Are
4 these consistent generally with what the Bortz
5 survey has found? And I said yes.

6 And there are some differences. And
7 the differences were in the three smallest
8 categories. A couple of those got negative
9 numbers. We have talked some about that. I
10 don't think it is literally a negative value.
11 Public's number was too small. That justifies
12 some adjustment.

13 But, again, it wasn't an a priori
14 decision about what was large or what was
15 small. It was just looking at the body of
16 evidence once I had it and asking whether that
17 seemed like the sort of match that indicates
18 support for the Bortz survey.

19 Q. You put up or you were asked earlier
20 this morning about this table a couple of
21 times.

22 And if you look at the Crawford
23 numbers in -- in your rebuttal report, it looks
24 like Public Television actually had the largest
25 share of compensable minutes by Claimant group

1 weighted by subscribers. Is that right?

2 JUDGE BARNETT: I'm sorry, Mr. Cho.

3 For the record, "this table"?

4 MR. CHO: Oh, I'm sorry. This is
5 Table 11 on page 34 of the written rebuttal
6 testimony of Dr. Israel, which is Exhibit 1187,
7 I think.

8 JUDGE BARNETT: Thank you.

9 THE WITNESS: Yes. On this table the
10 Crawford results show the largest weighted
11 minutes for Public.

12 BY MR. CHO:

13 Q. Is that an indicator that Public
14 Television is a larger Claimant group or a
15 smaller Claimant group when you're talking
16 about, you know, which shares should be
17 corroborated by the Bortz survey -- by your
18 regression?

19 A. My discussion until now has been in
20 terms of value shares and value shares from
21 previous proceedings and things. On this
22 particular metric, Public has -- seems to have
23 the most minutes.

24 Q. And turning to your written direct
25 testimony, which is Exhibit 1003, this is page

1 18 with your regression coefficients.

2 A. Um-hum.

3 Q. Is the regression coefficient for
4 Public Television actually the third largest,
5 greater than Program Suppliers?

6 A. Yes. I mean, the product of the two
7 puts Program Suppliers well ahead of the
8 coefficient and the minutes but, yes, Public is
9 third in the coefficients.

10 Q. So would that also be an indicator
11 that maybe it is a larger category as opposed
12 to a smaller category for purposes of
13 determining whether or not your regression is
14 corroborating the Bortz survey?

15 A. I mean, again, I look at -- I mean, my
16 comparison has been by the bottom line value
17 shares, but certainly on the coefficients it's
18 third.

19 Q. Okay. Let's talk a little bit about
20 your regression in the year 2013.

21 Your regression does not include the
22 year 2013; is that right?

23 A. That's correct.

24 Q. So based on your statement on page A-1
25 of your rebuttal testimony, which is

1 Exhibit 1187, and it is up on the screen --

2 A. Okay.

3 Q. -- I take it the reason you didn't
4 include 2013 is because you didn't categorize
5 any programming data for 2013?

6 A. No, didn't include any data for 2013
7 in the regressions, the regression data or the
8 programming categorization.

9 Q. I guess what I'm trying to get at is,
10 is one of the reasons why you didn't do that
11 because you didn't have any programming data
12 categorized for 2013?

13 A. I mean, I would say we didn't go
14 through and categorize the data for 2013
15 because just generally I didn't have regression
16 data for 2013.

17 So it's fair to say I didn't do it
18 because it hadn't been initially part of the
19 regressions, and I didn't have the data.

20 Q. Well, did you have access to any
21 programming data from 2013?

22 A. I honestly don't know all of the
23 background. I think that none of that data was
24 -- was purchased. I think that's right. I
25 mean, generally, I didn't have access to any

1 data from 2013 to do the regressions from my
2 point of view.

3 I honestly don't know sort of the
4 back, you know, my staff and sort of what data
5 had been purchased or not purchased. From my
6 analysis, I just didn't have any data from
7 2013.

8 Q. Did you ask counsel or anyone for
9 access to data from 2013?

10 MR. LAANE: Objection to the inquiry
11 into discussions with counsel.

12 BY MR. CHO:

13 Q. Did you ask anyone for data from 2013?

14 A. No. I mean, as I mentioned in my
15 direct testimony, I had already been working
16 for some time on 2010 to 2012, and because I
17 wanted to see if there was a corroboration.

18 If it corroborates for those three
19 years, that gives me confidence, you know, the
20 survey is doing a good job for those three
21 years.

22 So given the assignment was to -- to
23 check the corroboration, I didn't, you know, I
24 decided 2013 wasn't necessary to answer that
25 question.

1 Q. So you never asked anyone for 2013
2 data?

3 A. That's correct.

4 Q. Would you have preferred to have had
5 the data for all four years?

6 A. I mean, again, I mean, all else equal,
7 another year of data is another year of data.
8 But given that the question is to corroborate,
9 you know, if it corroborates for the first
10 three years, then the survey is doing a good
11 job.

12 So I saw minimal value in adding
13 another year.

14 Q. You don't actually know what the
15 results of adding another year would have been
16 until you add the other year; is that right?

17 A. I mean, at this point I have not run
18 my regression through 2013. I have seen what
19 Dr. Crawford did. I have seen the comparisons
20 of his numbers to my numbers across the various
21 years.

22 So I now have even more information to
23 say that 2013 doesn't appear to have changed
24 the results. But really it was just a decision
25 that you need an experiment to decide if the

1 marketplace data corroborates Bortz. And 2010
2 through 2012 was a good experiment for that
3 question.

4 Q. On page 7 of your rebuttal testimony
5 you state that Dr. Crawford gets his highest
6 implied royalty allocation for sports in 2013,
7 indicating that if you had included data for
8 2013 in your regression analysis, it likely
9 would have found an even greater average share
10 for Sports programming, right?

11 A. I mean, it certainly indicates that in
12 his case the Sports share went up, yeah.

13 Q. But that's what you wrote in your
14 testimony, right, on page 7 of your rebuttal
15 testimony?

16 A. Right. I mean, I did write that. But
17 the ultimate conclusion of that paragraph is
18 Dr. Crawford's analysis corroborates the Bortz
19 survey for 2013, and indicates that my focus on
20 the period 2010 through 2012 does not bias my
21 results.

22 So all I'm trying to say is that my
23 conclusions are not biased by using those first
24 three years.

25 Q. Well, but in this particular footnote

1 you are actually saying that, if you had
2 included 2013 in your regression analysis, it
3 likely would have found an even greater share
4 of the average value of Sports programming.
5 Isn't that what you're saying here?

6 A. Yeah, the footnote indicates that, if
7 anything, the Sports share in particular would
8 have gone up some, yes.

9 Q. Okay. And in this statement you are
10 referring to figure 20 of Dr. Crawford's
11 testimony, which is for the record page 45 of
12 Exhibit 2004. And it is up on the screen.

13 Is this the table you were talking
14 about?

15 A. I think that's correct, yes.

16 Q. Dr. Crawford's implied royalty
17 allocation for Public Television in 2013 is
18 above his average share for Public Television
19 in all four years; is that right?

20 A. Yes, looks like it is the second
21 highest year but it is above the average, yes.

22 Q. And for what it is worth, Mr.
23 Trautman's Bortz share for Public Television is
24 actually the highest in 2013 of all four years.
25 Is that right?

1 A. That looks to be correct, yes.

2 Q. So is it fair to say that if you had
3 included data for 2013 in your regression
4 analysis, you likely would have found a greater
5 average value for Public Television
6 programming?

7 A. I mean, these indicators, at least,
8 you know, comparing to these other two
9 empirical analyses suggest yes, yeah.

10 I mean, again, ultimately I am just
11 trying to corroborate what is in Bortz, so it
12 wouldn't change my conclusion, but these
13 indicators make it look like the share would be
14 a little higher.

15 Q. So it looks like for 2013 the Bortz
16 survey actually gave a lower share to sports
17 than it did for the average of all four years.

18 Do you still think that your
19 regression likely would have found a greater
20 average share for Sports programming if you had
21 included the 2013 data?

22 A. I mean, I can't say for certain. The
23 Crawford results indicate, yes, Bortz seems a
24 tiny bit lower. I mean, as you say, I don't
25 know if I haven't done it. But all of these

1 numbers are very close together, indicating
2 that nothing about the corroboration would
3 change.

4 Q. Well, do you think the Bortz surveys
5 are right, that sports value is lower than
6 average in 2013, or do you think the Crawford
7 analysis is right, that sports value was
8 highest in 2013?

9 A. I mean, I think both analyses are
10 indicating it is very close to the average.
11 Ultimately, as I have said, my view in the
12 proceeding is that the Bortz survey asks
13 exactly the right questions.

14 So I would, you know, I'm trying to
15 corroborate that. But I think that what I take
16 away from these sorts of numbers as an
17 economist is 2013 in both cases looks a lot
18 like the average.

19 Q. So then why did you state in your
20 report that, if you had included 2013, you
21 likely would have found a greater average value
22 for Sports programming?

23 A. I mean, because Dr. Crawford uses a
24 regression methodology, that is probably more
25 analogous to my regression methodology. So my

1 best guess would be what happened to the other
2 regression. So I would conclude it would
3 likely be very close.

4 I don't know what would happen, having
5 not had the data. But every one of these
6 indicators tells me I would continue to
7 corroborate.

8 And if I had to, you know, guess, it
9 would just be a guess now, for the exact value,
10 I would say the other regression probably gives
11 me the best indicator of what would happen.

12 Q. So we shouldn't draw any significance
13 from the fact that you included that footnote
14 in your report?

15 A. I mean, obviously, you know, I was
16 making a point about what would happen to the
17 Sports share in particular, so that that number
18 would not be biased. And I think you should
19 say my best estimate is that the Sports share
20 in 2013, if anything, would be a little bit
21 higher.

22 But, again, my entire testimony, you
23 know, my point is does it or does it not
24 corroborate Bortz? And I think we see that
25 across all the different sources.

1 Q. Okay. I want to ask you a few
2 questions about your programming data.

3 You relied on a four-week sample of
4 programming data for each six-month accounting
5 period; is that right?

6 A. 28 days, just to be clear, it is not
7 four weeks in a row. It is 28 days from --
8 from the six-month period.

9 Q. Thank you. Four weeks worth of data?

10 A. Yeah.

11 Q. And you only had that data for three
12 of the four years, 2010 through 2012?

13 A. Correct.

14 Q. And unlike the data that you were
15 working with, Dr. Crawford's data set included
16 all of the programming data for all four years,
17 right?

18 A. That's my understanding. I haven't
19 been deep inside his data, but I think he
20 included all of the days and then categorized
21 them algorithmically or something. But beyond
22 that I have not investigated it.

23 Q. But your understanding is that he
24 included all of the programming data for all
25 four years?

1 A. That's my understanding, yes.

2 Q. In your opinion, for the 2010 to '13
3 period, are the shares calculated by
4 Dr. Crawford more accurate than the shares that
5 you calculated in your direct testimony?

6 A. I really don't know. He included more
7 days but used a different algorithm for
8 categorizing that I have not reviewed closely.

9 And my opinion, based on what I've
10 seen, is that they are probably similar, but I
11 have not done a careful check of exactly how he
12 categorized things.

13 Q. So you have no opinion as to whether
14 his results are more accurate for the four-year
15 period than your results are for the four-year
16 period?

17 A. For the four-year period? Sorry.
18 Yeah, I mean, he includes 2013. So I wouldn't
19 put my results as having any categorization for
20 2013. So he gives an estimate for 2013 that I
21 don't.

22 For 2010 through 2012, I am confident
23 that my categorizations are accurate, and I
24 just -- I wouldn't put myself forward as having
25 reviewed his.

1 Q. So if we had to try and use one or the
2 other study or both studies to try and
3 determine valuations for the four-year period,
4 which is more accurate in your opinion?

5 A. I mean, again, he obviously has 2013
6 and I don't, but I -- I -- I don't feel that I
7 can give a relative comparison of mine versus
8 his because that's just not an analysis I've
9 done.

10 Q. All right. Now I want to ask you some
11 questions about your analyses of the value per
12 hour of sports and other categories of
13 programming.

14 In your written direct testimony one
15 of the things you did was to assess the
16 relative value per hour of sports programming
17 versus other types of programming. Right?

18 A. I mean, generally, yes. But are you
19 referring to some specific analysis?

20 Q. No, no. I am asking generally.

21 So did you look at that same metric
22 value per hour of programming in the Bortz data
23 for WGN-only systems?

24 A. Not that I recall, no.

25 Q. So for WGN-only systems, the 2010 to

1 2013 Bortz surveys explicitly identified to
2 each respondent the number of hours of
3 compensable programming in each category,
4 right?

5 A. Sorry, could you repeat that?

6 Q. Yes. So for WGN-only systems, they
7 were given a special programming summary?

8 A. Yes.

9 Q. And the Bortz survey actually
10 explicitly identified to the respondents to
11 those surveys the number of hours of
12 compensable programming in each category,
13 right? Is that your understanding?

14 MR. LAANE: There is no foundation for
15 this line of questioning.

16 MR. CHO: Your Honor, the foundation
17 is in the Bortz report, which he reviewed.

18 JUDGE BARNETT: I don't understand the
19 objection, Mr. Laane.

20 MR. LAANE: He hasn't been here
21 testifying about the Bortz survey. I don't
22 know if there is any foundation to be asking
23 him about details like WGN programming summary.

24 JUDGE BARNETT: Well, he has been
25 testifying at length about the Bortz survey.

1 Overruled.

2 Whether he knows about the detail
3 underlying the Bortz survey, he can answer or
4 not answer. That's up to him.

5 THE WITNESS: So my recollection is
6 that there was a different -- information given
7 to people who were WGN-only systems. I don't
8 recall as I sit here whether it listed the
9 number of hours of compensable versus
10 non-compensable.

11 I recall that it provided information
12 on that topic.

13 BY MR. CHO:

14 Q. Okay. Well, based on your analyses of
15 the value of programming per hour, what would
16 you expect the relative value of sports
17 programming per hour to be compared with the
18 relative value per hour of the other categories
19 of programming on WGN?

20 A. I mean, my general conclusion from my
21 analysis is that the value of sports
22 programming is higher per hour than of other
23 categories of programming. So I -- I think
24 that would apply to WGN.

25 My conclusions are based on that

1 finding overall.

2 Q. How many times, roughly, greater?

3 Just very roughly would you expect sports
4 programming value per hour to be?

5 A. I mean, I don't have a specific number
6 times greater on one particular signal. It is
7 going to -- I have an overall number based on
8 like type of content that's in the distant
9 signals. And another overall number is based
10 on the content that's on, say, TBS or TNT. But
11 I couldn't offer a number for the specific
12 content on one signal, a multiple.

13 I mean, everything I have seen
14 indicates the sports content is many times more
15 valuable, but I couldn't offer an exact number
16 for one signal.

17 Q. Well, the numbers that you present in
18 your report, what -- what were those about for
19 sports programming versus other programming?

20 A. I mean, it depends on which analysis.
21 It varies depending on the analysis.

22 Q. Well, what analyses do you think are
23 most relevant to this proceeding where we're
24 trying to determine the value of sports
25 programming on, say, WGN?

1 A. I mean, so, for example, in the
2 regression analyses that look at values per
3 minute, I mean, you would have to compare --
4 you know, it breaks it out by category. So you
5 would have to compare sports to a specific
6 other category.

7 But it's, you know, it's ten times
8 more than some, four times more than others.
9 It depends on the category. But it certainly
10 shows sports value per minute being higher than
11 the other categories.

12 Q. Okay. Let's walk through an example
13 survey response chosen and filed by the Joint
14 Sports Claimants on Friday. And this is
15 Exhibit 1118.

16 MR. CHO: And, Your Honors, this is a
17 restricted document.

18 JUDGE BARNETT: Is there anyone in the
19 hearing room who is not privy to confidential
20 information or who has not signed a
21 non-confidentiality agreement? I don't see
22 anyone. Thank you. Thank you, Mr. Cho.

23 (Whereupon, the trial proceeded in
24 confidential session.)

25

O P E N S E S S I O N

2 JUDGE BARNETT: We can reopen the
3 door.

4 BY MR. CHO:

5 Q. So it looks like the movies category
6 had the highest average Bortz survey value per
7 hour for WGN-only cable systems throughout the
8 four-year period, right?

9 A. It does. Again, movies are not very
10 many hours and I have not myself looked at them
11 separately before.

12 But if we break out movies, it appears
13 to have the highest computed value per hour.

14 Q. Right. And from 2010 to 2011 to 2012,
15 there was a big change in the number of movies
16 that the respondents were supposed to be
17 valuing, from 116.5 hours down to 49 hours and
18 then down all the way to 9.5 hours, right?

19 A. Yeah, I see that, yes.

20 Q. But the respondents' valuations in the
21 movie category don't look like they changed
22 that much, did they?

23 A. I don't know what we mean by "that
24 much." They stay roughly the same between the
25 first two years and then drop quite a bit to

1 the third year.

2 Q. Okay. Well, in 2010 the average movie
3 valuation was 18.3 for the 116.5 hours of
4 movies?

5 A. That's what it says, yes.

6 Q. And then the next year, there were
7 less than half the number of hours of movies
8 but the valuation actually goes up to 19.5,
9 right?

10 A. That's what it says, yes.

11 Q. And then in 2012, there were less than
12 ten hours of movies, but the valuation only
13 fell to 10.1, not even a 50 percent drop?

14 A. Right. I mean, I don't know anything
15 about the underlying movies that were being
16 shown, but, yes, it appears that whatever that
17 set of movies was, the value was similar in the
18 first two years and then the number of movies
19 dropped and the value dropped, but not by as
20 large a percentage.

21 Q. The respondents didn't know what
22 movies were being shown either, because they
23 were given that card that just said movies,
24 right?

25 A. I mean, the respondents are reporting

1 on their valuation of the movies given their
2 overall set of content. I don't know actually
3 what they know about what was available in
4 different years, on WGN or otherwise.

5 Q. Well, didn't Mr. Trautman say that the
6 reason he needed to provide that programming
7 summary was because they didn't necessarily
8 know what's compensable and what's not, which
9 movies were compensable and which weren't on
10 WGN in those years?

11 A. I really don't know what he said on
12 that topic. I do know, my recollection is he
13 indicated he wanted to provide clarity on the
14 compensability question. But I don't know what
15 he said specifically.

16 Q. Okay. To your knowledge, did movies
17 get that much more valuable from 2010 to 2012?

18 A. I really don't know.

19 Q. Sports value per hour is about
20 one-fifth of movies value per hour, followed
21 closely by Devotional programming.

22 Is that consistent with your analysis
23 of the value per hour of sports programming?

24 A. Where are we looking on here?

25 Q. We have highlighted the numbers which

1 are just the -- the averages for the four-year
2 period.

3 A. Oh.

4 Q. And movies had an average value per
5 hour of .72. Sports had an average value per
6 hour of .13. And Devotional had an average
7 value per hour of .09.

8 So is that consistent with your
9 analysis of the value per hour of sports
10 programming?

11 A. Again, I have never done a comparison
12 of sports to movies. So what I see here, if I
13 were to do the analysis I have done, is that
14 sports is higher than syndicated, news, or
15 Devotional.

16 I have never done sports as syndicated
17 exactly either, but I have done sports to
18 Program Suppliers, which obviously is mostly
19 syndicated when you rolled those together.

20 So the ratios are different than what
21 I found in -- in, you know, depending on which
22 analysis, including a different set of systems
23 and content, but the overall ranking looks the
24 same.

25 I mean, not the same in order, but you

1 asked me about sports in particular.

2 Q. So you said that you don't have
3 experience in movies. If we put that aside, do
4 the ratios between sports, syndicated programs,
5 news programs and Devotional programs, do those
6 ratios of the value per hour for those
7 categories look consistent with your
8 experience?

9 A. Consistent? I mean, again, sports is
10 highest. Devotional is higher than it was in
11 the regressions, as I indicated, you know, I
12 thought it probably was, given that the
13 regressions don't always do as well with some
14 of the lower value categories.

15 The regressions are, you know, my
16 regressions are really weighted to give more
17 weight to the larger dollar systems because
18 they pay in more dollars.

19 So the ratios are certainly in a, you
20 know, have sports first, otherwise the order is
21 somewhat different and the relative values are
22 somewhat different.

23 Q. But you didn't even just use your
24 regression analysis to come to these
25 conclusions about the value per hour of sports

1 programming, did you? I mean, you also looked
2 at, for example, TNT, TBS, other data on the
3 relative value of sports programming per hour
4 and specifically the magnitude of the
5 difference, right?

6 A. Yeah, that's fair.

7 Q. So are these valuations consistent
8 with that analysis?

9 A. I mean, they are consistent with the
10 fact that an hour is not an hour. It depends
11 on the type of programming, and that sports is
12 the highest. But this particular set of sports
13 and these systems, the ratio is not as large as
14 it is in some of my other analyses.

15 Q. In fact, it is substantially
16 different, isn't it?

17 A. The ratio -- the ratio here between,
18 say, Sports and other types of programming is
19 different than it is for, you know, the TBS or
20 TNT analysis or my regressions. Again, each of
21 those has a different set of content.

22 So the way to think about this is that
23 each analysis tells you an hour is not an hour.
24 It depends on what type of programming. Sports
25 tends to have the most value.

1 If you want to think about the full
2 set of systems and the relevant set of content
3 here, you go to something like my regression or
4 Bortz that looks at the full set of systems and
5 the content here.

6 At no point am I applying a ratio from
7 one of my analyses to some other set of
8 content.

9 Q. Okay. So you are saying that, you
10 know, we shouldn't be looking at your analyses
11 on TNT or TBS because that was a different type
12 of programming than this; is that right?

13 A. I am saying you should take two things
14 from those analyses. Most importantly, that an
15 hour is not an hour, that you have to think
16 about what kind of content it is.

17 And, secondly, that consistently
18 across the different sources, and I think
19 generally known in the industry, sports tends
20 to have a higher value per hour. Those are the
21 two things I would take out.

22 I mean, I want to be clear that I
23 don't think -- at no point would I say you
24 should take the TBS multiple and apply it to
25 the content at issue in this case. I think you

1 should say an hour is not an hour and that a
2 large body of evidence says sports hours tend
3 to be more valuable than other types of hours.

4 Q. Would you say that your research on
5 the value per hour of programming corroborates
6 or refutes or some other word when compared
7 with the Bortz valuations per hour of
8 programming on WGN-only systems?

9 A. I mean, again, ultimately my analysis
10 is value per minute times minutes across the
11 full set of content.

12 So the fact that when I take a value
13 per minute and multiply it by the actual
14 minutes I get shares that look a lot like Bortz
15 overall means that it's corroborating the Bortz
16 shares.

17 To the extent underlying the Bortz
18 shares there is people in their heads doing how
19 many minutes times value per minute, the match
20 in the overall shares indicates that my
21 analysis is corroborating what the Bortz survey
22 found, only when applied to the full set of
23 content and only when thinking about that
24 bottom line share calculation.

25 Q. I know you want to talk about the

1 bottom line share calculation, but the fact is
2 you did an analysis of the value per hour of
3 programming, sports programming, relative to
4 other types of programming, right?

5 A. I did a regression analysis that
6 computes a value per minute as a way to compute
7 a bottom line share. Right? But if the value
8 per minute, I mean, underlying the Bortz shares
9 there are minutes of programming and valuations
10 per minute.

11 The minutes of programming underlying
12 Bortz and the minutes of programming underlying
13 my regression, it's the same content. Right?

14 So if my overall bottom line matches,
15 it means that it is matching the -- when you
16 add the valuation piece.

17 Q. But the -- so maybe in your opinion
18 the bottom line matches, but does the halfway
19 point, the value per hour or value per minute,
20 does that match between your analysis and the
21 Bortz survey?

22 A. I mean, again, for 2012 through --
23 2010 through 2012, which is what I looked at,
24 it is the same underlying content.

25 So if the same underlying content is

1 on these signals, there is so many minutes of
2 each type of programming, so --

3 JUDGE STRICKLER: The subset that
4 counsel is showing you that's on the screen is
5 WGN-only systems.

6 THE WITNESS: Correct.

7 JUDGE STRICKLER: The fact that those
8 numbers, that subset is so different than what
9 was in the overall Bortz survey and in your
10 regression, does that suggest to you that there
11 must be something different from the WGN-only
12 systems in the minds of the CSOs that would
13 account for that difference?

14 THE WITNESS: I mean, certainly their
15 valuations for that specific set of systems are
16 different. I haven't -- I mean, I don't want
17 to oversell what I have done. I haven't dived
18 into these specific systems and their
19 valuations. I mean, the bottom -- the overall
20 set of valuations comes out similar,
21 incorporating these.

22 But I would agree that these -- some
23 of these are different and in some cases quite
24 different from the overall average. And my
25 focus has been on the overall average.

1 JUDGE STRICKLER: Because your focus
2 wasn't on this subset, you can't opine as to
3 why this subset is different?

4 THE WITNESS: I honestly don't know
5 why this subset is different.

6 JUDGE STRICKLER: Okay.

7 BY MR. CHO:

8 Q. In your opinion, are the Bortz survey
9 responses reliable measures of the value per
10 hour of compensable programming on WGN?

11 A. My opinion is that the Bortz survey
12 responses are reliable measures of the overall
13 value of the programming.

14 I don't know -- and, therefore, as I
15 have said, reliable measures sort of by math of
16 the overall value per hour of all of the
17 content.

18 Q. But you said you are not a survey
19 expert, right?

20 A. I am an expert on the marketplace data
21 that indicates that the marketplace data
22 corroborates what is in Bortz.

23 Q. Isn't it true that the Bortz survey
24 respondents for WGN-only systems were the only
25 Bortz respondents who were actually given

1 detailed programming data for the distant
2 signals they were valuing?

3 A. That's consistent with my
4 recollection. I don't, again, now we're into
5 details of what instructions were given to each
6 that are not all crystal clear in my head as I
7 sit here, but my recollection is there were
8 instructions that were given to the WGN-only
9 systems in particular.

10 Q. Those are the systems we have been
11 talking about?

12 A. Yes.

13 Q. And, In fact, the only programming
14 information given to all of the other Bortz
15 respondents was the call sign of the station?

16 A. That I just don't recall.

17 Q. So the only -- the WGN-only
18 respondents we have been talking about had the
19 most programming information of all the Bortz
20 respondents. Is that fair to say?

21 A. Again, I'm sure other people can
22 characterize the survey details more than I
23 can. My recollection is the WGN-only systems
24 were given some additional information, yes.

25 MR. CHO: Okay. I pass the witness.

1 JUDGE BARNETT: Thank you, Mr. Cho.
2 Mr. MacLean, you look poised, I mean, and
3 ready.

4 MR. MacLEAN: Always poised.

5 JUDGE BARNETT: Always poised.

6 CROSS-EXAMINATION

7 BY MR. MacLEAN:

8 Q. Good morning, Dr. Israel. I am
9 Matthew MacLean. I represent the Settling
10 Devotional Claimants.

11 A. Good morning.

12 Q. I first want to start out with some
13 common ground, and I'd like to show you your
14 direct testimony, Exhibit 1009, at page 9.

15 A. Do you want me to turn to that or is
16 it coming on the screen?

17 MR. LAANE: Do you mean 1003?

18 MR. MacLEAN: I think it is 1003.
19 Yes, thank you. 1003.

20 THE WITNESS: At page 9?

21 MR. MacLEAN: Page 9, 1003.

22 THE WITNESS: I got it.

23 MR. MacLEAN: Apparently we have to
24 boot up a computer or something.

25 BY MR. MacLEAN:

1 Q. Okay. So taking a look at this quote
2 at the top of the page --

3 A. That's helpful. Thanks.

4 Q. And this is actually a quote from a --
5 from an opinion of the Judges' predecessors,
6 the Copyright Arbitration Royalty Panel; is
7 that correct?

8 A. It looks like it is from their report
9 in May of 1996.

10 Q. And you say, "the critical
11 significance of the Bortz survey is the
12 essential question it poses to cable system
13 operators, that is: What is the relative value
14 of the type of programming actually broadcast
15 in terms of attracting and retaining
16 subscribers? That is largely the question the
17 Panel poses when it constructs a simulated
18 market. Further, the question asks the cable
19 system operator to consider the same categories
20 we are presented here in the form of Claimant
21 groups, that is, sports, movies, and the
22 others. That is also what the Panel must do."

23 Now, even though you put this, this
24 language in the words of the CARP, is this also
25 your opinion about the Bortz survey?

1 A. Generally, yes. There is maybe some
2 specific words I would write differently but
3 generally yes.

4 Q. And is it your opinion that the Bortz
5 survey is the best methodology presented for
6 the valuation of the -- of the program
7 categories in this proceeding?

8 A. That's my opinion, yes.

9 JUDGE STRICKLER: Are you saying the
10 Bortz survey is the best survey or that survey
11 -- the survey approach is the best approach?

12 THE WITNESS: I think the Bortz
13 survey, I mean, again, my guiding principle
14 here in evaluating the surveys is how well they
15 match the marketplace data.

16 And so I think the -- I think two
17 things: The survey, I do agree, is asking
18 exactly the right question and then the survey,
19 the Bortz survey in particular, appears to
20 match the marketplace data better than the
21 Horowitz survey, which is the other one I'm
22 aware of.

23 JUDGE STRICKLER: So your measure of
24 whether a survey is accurate is whether it
25 matches the marketplace data that you calculate

1 through your regression?

2 THE WITNESS: And I would also include
3 the Crawford regression and things like that.
4 But, yes, I mean, at least I think I would say
5 what I can add to the discussion is a
6 comparison to the marketplace data.

7 JUDGE STRICKLER: Thank you.

8 BY MR. MacLEAN:

9 Q. But Bortz is best, is what you would
10 say?

11 A. I mean, I would say what I say here,
12 yeah, I think it is the best thing we have
13 available, given the question that it asks and
14 given that, again, what I can add in my
15 expertise is how well it matches the
16 marketplace.

17 Q. And, of course, for this proceeding,
18 Bortz, some improvements have been made to the
19 Bortz survey methodology; is that right?

20 A. That's my understanding, yes.

21 Q. So would you say the best of the best
22 got better?

23 A. I mean, I really have not been
24 involved in previous proceedings. So I -- I
25 can't really comment on Bortz in previous

1 proceedings.

2 Q. So let me, since we just referenced
3 PTV, let me talk a little bit about what Mr.
4 Cho went through with you.

5 And I am going to -- could I have the
6 ELMO, please? I am going to put up my very
7 slick graphic here.

8 And this is what Mr. Cho showed you
9 with regard to the Bortz survey breakdown
10 computed into a value per hour for WGNA-only
11 systems.

12 Do you -- do you remember these
13 numbers that Mr. Cho just showed you?

14 A. Yes.

15 Q. Roughly? Okay. So one thing you can
16 see here is that for WGNA-only systems -- first
17 of all, would you regard WGNA-only systems as
18 being a representative sample of the universe
19 of systems out there?

20 A. No, I have no reason to think it is
21 representative. That's why I kept stressing it
22 was just results for that subset.

23 Q. And you can see that here, the
24 Devotional category, if you compute it into a
25 value per hour approach, the Devotional

1 category is somewhat higher than, for example,
2 the news category. Is that right?

3 A. Yeah, on this value per hour
4 calculation, yes.

5 Q. Now, if WGNA -- if WGNA is made
6 available, unlike many stations, on a
7 nationwide basis, would you expect -- I believe
8 the example that Mr. Cho showed you was from
9 Louisiana -- would you expect people,
10 subscribers in Louisiana, to be particularly
11 interested in Chicago news?

12 A. I don't know. I'm sure many of them
13 aren't. Some of them may be.

14 Q. Do you have any -- any expectations
15 about the level of religiosity in -- in the
16 Louisiana area?

17 A. I really don't know.

18 Q. Okay. With regard to sports, is it --
19 is it possible that nationwide, on a signal
20 like WGNA, that nationwide people might be less
21 interested in Chicago area sports than, for
22 example, people living in the Chicago area?

23 A. I mean, I imagine that's true among
24 viewers. Again, as I stress in my testimony, I
25 think we should be talking about what CSOs

1 value to put on their systems.

2 But if your point is there is
3 differences in sports preference nationwide
4 relative to a particular city, I agree with
5 that.

6 Q. And, of course, you have stressed a
7 number of times that number of hours is not
8 really a measure of value. Would you agree
9 with that?

10 A. Yes.

11 Q. So is it possible, for example, that
12 cable systems might put a certain degree of --
13 that there might be some nonlinearity in the
14 valuation that cable systems put onto programs?
15 Maybe a little bit of Devotional programming
16 goes a long way. Is that possible?

17 A. I mean, sure, it's possible. I don't
18 know in particular. But my experience in the
19 industry is there is not a great linkage
20 between hours and value.

21 And sometimes it can be that you want
22 a small amount of some different content to
23 give that option to your viewers, that that can
24 have value, a lot of value to people.

25 Q. Even -- even very religious people,

1 how many hours a week would you ordinarily
2 expect them to spend in church?

3 A. I don't know. I mean, if I was doing
4 well, it would be an hour, but I don't know
5 beyond that.

6 JUDGE STRICKLER: Is this a subject of
7 your expertise?

8 (Laughter.)

9 THE WITNESS: No.

10 BY MR. MacLEAN:

11 Q. Mr. Cho also pointed out that the
12 Bortz survey respondent -- Bortz survey
13 questionnaire very helpfully pointed out that
14 the Devotional programming at issue was early
15 on Sunday mornings, like 5:30 a.m. Is that
16 right?

17 A. Yes.

18 Q. And in Chicago, when it is 5:30 a.m.
19 in Chicago, what time is it on the West Coast?

20 A. Also not an area of my expertise, but
21 I believe it is 3:30.

22 Q. And what time is it on the East Coast?

23 A. 6:30.

24 Q. Okay. So it varies across the
25 country, right?

1 A. Yes.

2 Q. Okay. Let's take a look at your -- so
3 now that we have gone through the best of the
4 Bortz, let's take a look at the -- your
5 regression specification, which is Israel
6 direct, page B-13.

7 Now, we're all very comfortable now
8 looking at regression specifications, having
9 seen a few. But I just want to make a couple
10 of points about yours.

11 Yours -- this regression specification
12 is in the functional form of a linear
13 regression; is that right?

14 A. Yes.

15 Q. And here you have the level number of
16 total royalty fees paid by the CSOs your
17 dependent variable, right?

18 A. That's correct.

19 Q. And then you -- your -- your
20 specification essentially assumes that that
21 total royalty fee amount is going to vary as a
22 level function of each of your control
23 variables. Is that right?

24 A. I don't think I would say it assumes
25 it will vary in that way. I think I would say

1 that the regression finds the best linear
2 function to predict the royalty fee.

3 Q. Okay. But you are not looking for any
4 sort of non-linear function here, right?

5 A. That's correct. It is consciously
6 measuring the relationship between dollars and
7 levels, and these other variables measured in
8 levels.

9 So it is intentionally looking for the
10 best linear predictor, because that's the
11 economic functional form that I considered most
12 relevant.

13 Q. Okay. Now, if you look down to where
14 you have beta 9, that's your coefficient for
15 number of subscribers from previous accounting
16 periods, right?

17 A. That's correct.

18 Q. Okay. So this -- this -- what you are
19 expecting to see or what this -- this
20 specification essentially assumes is that the
21 total royalty fee paid by the CSO bears a
22 linear relationship with the number of
23 subscribers from previous accounting periods;
24 is that correct?

25 A. I mean, again, the way I view these

1 regressions, I don't think it is making an
2 assumption about. I think it is saying it is
3 going to find the best linear predictor, the
4 best linear relationship it can find.

5 Q. Okay. Now, why would you control for
6 the linear number of subscribers in a
7 level/level relationship with the level number
8 -- level royalty fee paid by the CSO?

9 A. I mean, my most basic reason for
10 almost every specification decision was to be
11 consistent with what had been done previously.

12 But when I evaluated it, again, I
13 think it is reasonable to ask for, as the
14 number of subscribers goes up, you know,
15 looking for the best linear relationship, so
16 looking for how much the bid in 9 would
17 multiply how much more you would pay in
18 royalties.

19 So it is pretty common in regressions
20 to sort of look for these sorts of linear
21 relationships letting the coefficient multiply
22 up the number of subscribers.

23 Q. And your goal here by including this,
24 this control variable, is to essentially remove
25 the influence of the number of subscribers of

1 the system on the total royalty fees paid so
2 you can look at what you are trying to see
3 through your -- through your other
4 coefficients; is that right?

5 A. I think it is to control for the
6 number of subscribers. I mean, in combination
7 with the other control variables, I think it is
8 controlling for the size of the system.

9 Q. Are you -- are you concerned that
10 using the level number of subscribers with the
11 level royalty fee paid is simply replicating
12 the royalty fee calculation?

13 A. No, not at all. For purposes of the
14 size calculation, I would like to, you know,
15 measure the way that size affects the formula.

16 Q. That's the goal, right, to include --
17 to include a control for number of subscribers
18 that correctly models how it -- how number of
19 subscribers would affect the total royalty fee
20 paid; is that right?

21 A. I mean, I would say the goal is to
22 control for the number of subscribers. Again,
23 I have consciously maintained a linear
24 relationship because it has been used before.
25 It is very standard in regressions.

1 But, yes, I would agree the goal is to
2 control for the number of subscribers.

3 Q. Now, I see you also have a control at
4 beta 7 for other prorated minutes; is that
5 right?

6 A. Right. That's minutes that couldn't
7 be classified into one of the categories. I
8 think generally because I just didn't have data
9 in the data I used.

10 Q. Have you -- have you considered what
11 the effect of the regression would have been if
12 you had included a control for total minutes or
13 total prorated minutes instead of other minutes
14 or other prorated minutes?

15 A. I mean, I haven't done that. My
16 expectation as I sit here is that it wouldn't
17 change anything.

18 Q. Well, wouldn't a control for total
19 minutes mean that you are measuring the average
20 contribution of one category versus taking away
21 the average contribution of whatever is in your
22 category of "other"?

23 A. I mean, that's fair. You would have
24 to interpret the coefficients correctly. So
25 another minute of, say, Program Supplier would

1 add one to the total and one to Program
2 Suppliers. So you would have to do the math.
3 But I don't -- I don't -- if you did the math
4 right, I don't think it would change the
5 regression meaning.

6 Q. Well, it would change the meaning of
7 the coefficients, right?

8 A. An individual coefficient would change
9 but you would still have the same information
10 in the regression.

11 Q. You would just have to do some algebra
12 to draw that information out?

13 A. Yeah. I think it is arithmetic but,
14 yeah, you would have to do some math to draw it
15 out.

16 Q. Fair enough. Okay.
17 So let's take a look now at your
18 regression results. That's Exhibit 1003, page
19 18, tab V-1.

20 A. Okay.

21 Q. So these, in your view, as I
22 understand it, these, these coefficients, these
23 regression coefficients, are representative of
24 -- and I believe you are now saying average
25 value per minute. Is that your -- is that your

1 view?

2 A. Yes. I mean, I think they are
3 measuring the average value per minute across
4 the systems and the data.

5 Q. And you have positive coefficients for
6 Sports, Program Suppliers, Commercial
7 Television and Public Broadcasting; is that
8 right?

9 A. Yes.

10 Q. And then for -- you have negative
11 coefficients for Canadian, Devotional, and
12 network programming; is that right?

13 A. Yes.

14 Q. And I see that it is actually most
15 strongly negative, your coefficient is the most
16 negative with regard to network programming.
17 Is that right?

18 A. That's right. We had some discussion
19 of that before, that it is important to
20 remember that programming is likely duplicative
21 of the network programming from the local
22 broadcast station.

23 Q. Well, in some markets it is
24 duplicative, right?

25 A. Yes.

1 Q. Some markets, for example, have an NBC
2 station, right?

3 A. Yes.

4 Q. And you would expect those markets to
5 be less likely to import an NBC signal on the
6 whole; is that right?

7 A. I mean, I guess all else equal. I
8 don't know what else they may be importing the
9 signal for.

10 Q. And then some markets might not have
11 an NBC station of its own, right?

12 A. I suppose that's possible. I don't
13 know the counts of how many have the network.

14 Q. I am not asking the count. Some
15 markets do have an NBC station. Some markets
16 do not. Is that correct?

17 A. I think most do. But it seems right
18 to me there could be some smaller markets that
19 didn't.

20 Q. And if there is a smaller market that
21 doesn't have an NBC station, that might be very
22 valuable to -- to import an NBC station; is
23 that right?

24 A. For that particular market, that
25 sounds right.

1 Q. And if those markets that are
2 importing that NBC station tend to be small
3 markets with very low fee-paying systems, you
4 would expect the importation of that NBC system
5 to actually reduce the coefficient for network
6 programming, for example; is that right?

7 A. I mean, I would expect the size of the
8 system to be controlled for by the control
9 variables we talked about before.

10 Q. Well, let's -- let's -- let's put
11 aside the number of subscribers because that's
12 only one component that goes into the amount of
13 receipts that a system has. Is that right?

14 A. Right. That's why I said before that
15 I -- when you were asking me questions, that I
16 consider the full set of controls to be
17 relevant, not just the number of subscribers.

18 Q. Okay. Well, you don't have a control
19 for the amount of receipts of the system; is
20 that right?

21 A. That's right. I mean, I stuck to what
22 had been done before. So I have things like
23 subscribers, number of channels, median income,
24 various -- count of broadcast channels,
25 multiple controls that I think are measures of

1 size.

2 Q. Okay. So let's assume all your
3 controls are working as intended for a moment.

4 Okay?

5 If you have a system that has a lower
6 -- that is a lower fee-paying system, importing
7 a network station, all else being equal, would
8 that tend to increase or decrease the
9 coefficient for network programming?

10 A. I mean, I don't -- again, you say the
11 controls are working as intended, so the
12 controls should, therefore, be soaking up the
13 effect of size.

14 So I would think that that additional
15 indicator would be measuring the value of the
16 programming to the best of the regression's
17 ability, not measuring size.

18 Q. Well, what does a negative coefficient
19 mean then?

20 A. We talked about this some. I think
21 the negative coefficient -- as we just
22 discussed, there are likely, in the case of
23 network, there are likely systems importing
24 network programming that don't really value the
25 network programming per se.

1 And so it could well be that, in the
2 case of network, the value on the network
3 programming per se is negative.

4 Q. Okay.

5 A. That would show up in the regression
6 as saying relatively -- given the type of
7 program we're talking about, relatively few
8 systems are paying for it because they already
9 have a duplicative, another network source.

10 Q. Well, it doesn't say anything about
11 the number of systems that are paying for it.
12 It says something about how much those systems
13 are paying. Isn't that right?

14 A. Right. I think that's fair. But I am
15 just saying you don't see -- if there was no
16 duplicative network programming, then you might
17 expect to see in the data lots of systems
18 bringing in network programming, even though it
19 cost a lot of money.

20 And the fact that you don't see that,
21 I think, is driven by the fact that there is,
22 in fact, duplicative network programming.

23 Q. Okay. I am putting up another very
24 slick graphic where we're going to graph fees
25 against minutes of some category of

1 programming. Okay?

2 A. Okay.

3 Q. Let's say network programming. All
4 right?

5 A. Okay.

6 Q. So what -- first of all, you have a
7 negative, a negative coefficient here. So how
8 would I draw my -- my regression line here?

9 A. Holding everything else constant and
10 just drawing that particular part of the line,
11 it would slope downward. So you would start
12 high and go down.

13 Q. And I could only draw a straight line
14 because you used a level/level regression
15 specification, right?

16 A. It is a linear regression, yes.

17 Q. Linear regression. Okay. So where do
18 you expect the data to fall? If I have got a
19 low number of minutes of network programming,
20 where do I -- where would the -- I mean, this
21 regression line would suggest that people with
22 low numbers of minutes of network programming
23 are paying a lot of fees, right?

24 A. I mean, all else equal, everything
25 else held fixed, which is a lot of other

1 things, then the low number of network minutes
2 would tend to correspond to a higher number, a
3 higher amount of fees.

4 Q. And then those systems that are paying
5 lower amounts of fees are, according to your
6 regression, all else being equal,
7 retransmitting more minutes of network
8 programming. Is that right?

9 A. I mean, I agree all else equal. But
10 the all else equal matters a lot because there
11 are other control variables in the regression.

12 Q. I agree. So what this, your
13 regression is really showing is that those
14 systems that are retransmitting a lot of
15 network minutes are paying comparatively low
16 fees, correct?

17 A. All else equal, I think that's right,
18 yes.

19 Q. And if these systems that are -- that
20 are retransmitting a lot of network minutes,
21 but paying low fees, decide they want to --
22 let's say they get an NBC station in their
23 area, and they decide to start to drop that
24 network programming.

25 What would that do to your

1 coefficient, if these systems that pay, that
2 pay low fees start retransmitting fewer minutes
3 of Devotional -- I mean, I'm sorry, of network
4 programming? You can see where I'm going next.

5 A. I mean, I would need, holding
6 everything else fixed, you are right about
7 which way the relationship goes, right. But
8 everything else is not held --

9 Q. I didn't say which way the
10 relationship goes. I'm actually asking you
11 this.

12 A. And then holding everything else
13 fixed, the way I would say it is on average in
14 the data, holding everything else fixed, a
15 smaller number of network minutes tends to be
16 associated with higher fees and vice versa.

17 Q. And if those systems that are paying
18 lower fees start dropping the network minutes
19 that they are carrying, will that tend to
20 reduce or raise the coefficient?

21 A. Reduce or raise the coefficient or the
22 payment?

23 Q. The coefficient. Your coefficient.
24 If these systems out here (indicating) drop
25 their network -- their network minutes, what's

1 that going to do to the coefficient; make it
2 more negative or more positive?

3 A. I mean, mechanically -- I don't know,
4 actually. It depends on where they are and how
5 they line up, what the residual is relative to
6 the line.

7 I mean, their minutes would go to
8 zero. But maybe I should, and maybe I am just
9 not seeing it as I sit here, but if you take a
10 particular system, I think you would have to
11 know where it sits relative to the line to know
12 what it would do to the coefficient.

13 Q. Well, I'm just saying let's say we
14 just take all these out. Okay? We're just not
15 going to have any -- any data points over here
16 because all the -- all of the low fee-paying
17 systems out there said: Forget it. We're sick
18 of this network programming. We don't like it.
19 It has negative value. We're getting rid of
20 it.

21 Now, if all you have left are these
22 high fee-paying systems with few minutes of
23 network programming, where is your regression
24 line going to be then?

25 A. I mean, it depends on the slope of

1 those dots that you have left.

2 Q. These are the only dots I have. These
3 are the only -- yeah, it depends on the slope
4 of the dots.

5 A. And that looks relatively flat the way
6 that you have drawn it.

7 Q. Okay. So you would have a flat
8 regression line, right?

9 A. I mean, the way you have drawn the
10 dots, I think so, but I don't know what the
11 slope of those dots actually is in practice.

12 Q. So really when you see a regression
13 line sloping downward, what that is saying is
14 that lower fee-paying systems are
15 retransmitting more of that kind of
16 programming; isn't that right?

17 A. No, because all else is held constant.
18 And you can't just make a bivariate
19 relationship statement from a multivariate --
20 there is lots of variables in the regression.

21 Q. Well, I only have two dimensions to
22 work with on the paper.

23 A. And, therefore, you can't make the
24 statement that you are trying to make. The
25 statement that I would say is that, given that

1 we're holding size constant, it is telling me
2 that, when I see a network of a given size, the
3 ones that have some network programming tend to
4 be ones that pay lower fees.

5 One interpretation of that would be
6 that they are only going to bring in the
7 network programming if it is relatively
8 inexpensive, given where they are on the
9 royalty payment, because it is not worth that
10 much to them to bring network programming in
11 because a lot of them have a duplicative
12 source.

13 Q. And another -- and another
14 interpretation would be that if it's a lower
15 fee-paying system, they are more likely to be
16 in a market that doesn't have its own network
17 programming and, therefore, values that network
18 programming, wouldn't that be?

19 A. I don't think that's a valid
20 conclusion given the other controls in the
21 regression.

22 Q. Well, what control would -- you have
23 pointed out your distant subscriber control
24 variable -- I mean, I'm sorry, your number of
25 subscriber control variables.

1 What other control?

2 A. Number of channels. Program systems
3 in smaller markets tend to carry fewer
4 channels. Number of broadcast channels is
5 directly controlled for in the regression,
6 which is part of your story. Median income.

7 These are all things that are getting
8 at the receipts that a system pays so that you
9 can't -- what you are trying to say is that
10 minutes of network programming or other types
11 of programming must be proxying for size, but
12 there are multiple control variables that are
13 measuring size.

14 So this is all conditional on those
15 control variables, which changes the whole
16 story.

17 Q. In your review of the data, have you
18 seen that there are, in fact, distantly
19 retransmitted stations out there that have
20 substantially all Devotional minutes?

21 A. I don't know about substantially all.
22 I -- I -- I just don't know.

23 Q. You haven't seen one way or the other?

24 A. I don't. I mean, I think I -- no, I
25 just don't know. I mean, I believe there are

1 signals that transmit substantially more
2 Devotional than others. But substantially all,
3 I just don't know.

4 Q. If -- if a -- if a station that was
5 substantially all Devotional minutes was
6 retransmitted at all, would that be
7 inconsistent with the notion that those minutes
8 have negative value per minute?

9 A. I mean, it would depend on -- I don't
10 know the financial arrangements behind it
11 rebroadcasting.

12 I mean, look, I think generally the
13 fact that people carry and transmit Devotional
14 programming means Devotional programming has
15 some positive value, which is why I take my
16 results on Devotional to say that number is low
17 but not zero and, therefore, have supported the
18 Bortz survey as a measure.

19 Q. In fact, a negative coefficient could
20 be an indicator of positive value, if it shows
21 that smaller -- that smaller fee-paying systems
22 are choosing to retransmit that programming.
23 Isn't that true?

24 A. Again, I don't think that's a valid
25 interpretation from a regression that has

1 multiple controls for size.

2 Q. You can't say it is not a valid
3 interpretation?

4 A. I think I can, because the regression
5 is designed to have multiple controls for size.
6 So we have to take all of those measures of
7 size out.

8 Your implication in your drawing could
9 well go the other way. Once you have got these
10 other controls for size in there, the presence
11 of a Devotional signal probably doesn't tell
12 you much about size, and certainly can't tell
13 you it's small because they have already
14 directly controlled for that.

15 Q. And I will ask you the same question
16 with respect to Canadian. If it were the case
17 that systems within the Canada zone tended to
18 be smaller, on average, tend to have lower
19 fees, lower receipts and lower fees on average
20 than systems elsewhere in the country, that
21 could create in your regression a negative
22 coefficient for Canadian programming, couldn't
23 it?

24 A. Again, I think that the controls for
25 size here are quite complete and quite

1 adequate. So I don't see that.

2 Q. You think -- you think because you
3 have controlled for size, that's impossible?

4 A. I think because I have controlled for
5 size, that could -- that interpretation is at
6 least highly unlikely. There are multiple
7 controls for size. That's -- let me say it
8 this way.

9 As an econometrician, if I'm concerned
10 about something like what you're saying, what I
11 would want to do is control for size. And I
12 have done that with multiple variables.

13 JUDGE STRICKLER: Can you, staying on
14 page 18, can you list which ones are your
15 controls that you would identify as your
16 controls for size?

17 THE WITNESS: Excuse me, number of
18 subscribers.

19 JUDGE STRICKLER: Right.

20 THE WITNESS: Number of activated
21 channels. I think a count of broadcast
22 channels in that same category. And then I
23 would say the median household income because
24 size is gross receipts, and so that measures --
25 that is going to be correlated with how much is

1 paid.

2 Sort of the accounting period, the
3 changes over time, that's going to be more a
4 measure of the increase in the price over time.

5 But as far as cross-areas, I think it
6 is subscribers, channels, and broadcast
7 channels get at measures of the size of the
8 area and the system, and then household income
9 gets at things that are going to be correlated
10 with payments.

11 JUDGE STRICKLER: Thank you.

12 BY MR. MacLEAN:

13 Q. You were asked some questions by Mr.
14 Cho about confidence intervals of your shares.
15 And you said you didn't calculate confidence
16 intervals of your shares. Is that right?

17 A. I didn't present any, correct.

18 Q. And actually it would be very, very
19 difficult to calculate, compute confidence
20 intervals with regard to shares because your
21 shares of any one category are dependent on the
22 shares in other categories. Is that right?

23 A. Yeah. I mean, you have to do
24 something more than just a simple linear
25 calculation.

1 Q. Okay. But you did say that confidence
2 intervals could be calculated for your
3 coefficients, correct?

4 A. Right. I think it would be
5 straightforward to compute confidence
6 intervals. You can do it almost off the page
7 for the coefficient. And, therefore, pretty
8 straightforward to do it for dollar amounts,
9 which would be coefficients times minutes.

10 Q. Okay. And the way that we would
11 calculate confidence intervals, we take your
12 standard error, we would multiply that by 1.96
13 and that would be your confidence interval
14 above and below, correct?

15 A. Approximately, yes.

16 Q. Okay. So if we were to do that for --
17 we will start with sports programming. Okay?
18 If we were to calculate confidence intervals
19 here, we would get a confidence interval
20 ranging from 0.003 to 9.669.

21 Does that look about right to you? I
22 have a calculator if you would like it.

23 A. There is actually one here handily,
24 but that looks -- I mean, I think the math is
25 roughly correct, yes.

1 Q. Okay. So you can say with confidence
2 that sports programming is worth somewhere
3 between a fraction of a penny per minute and
4 \$9.67 per minute?

5 A. I think I can say a lot more than
6 that. And, again, this is, just to be clear,
7 this is why I think it's important in my view
8 to think of this analysis as corroborative of
9 the Bortz survey.

10 Q. Well, let's go through -- we don't
11 want to just focus on one here because I know
12 you operate on all of them. So let's go down
13 to Program Suppliers.

14 Program Suppliers, your confidence
15 interval goes from .265 to .673. Does that
16 look about right?

17 A. I mean, yes, on the math. The answer
18 I was giving before is important, though,
19 because a confidence interval acts like the
20 regression is the only piece of information
21 that I have.

22 Q. Well, sir, you will have a chance on
23 redirect, if your counsel wants to give it to
24 you, to talk about what you think is important.
25 But I would like to focus on what I think is

1 important for a moment.

2 If we take a look at Commercial
3 Television, your confidence interval there is
4 going to be about 3.14 to 1.706, right?

5 A. Again, that's the confidence interval
6 from the regression. That's not my confidence
7 interval because my analysis is based on all
8 the data in the record.

9 Q. So based on this, you can say with
10 confidence that Commercial Television
11 programming is worth an average of between 31
12 cents and \$1.71?

13 A. I can say a lot more than that if I
14 combine this with the Crawford regression and
15 the Bortz survey.

16 Q. All right. So let's take a look at
17 Public Television. Confidence intervals from
18 0.060, 6 cents, to 1.260, \$1.26.

19 Does that confidence interval look
20 right?

21 A. That looks like the correct confidence
22 interval from the regression coefficient, yes.

23 Q. Canadian will be negative \$1.39, so
24 people are trying to get rid of their Canadian
25 programming, I guess, and negative about 56

1 cents.

2 Is that confidence interval about
3 right?

4 A. I think you have done the math right,
5 yeah.

6 Q. Devotional would be negative \$1.18,
7 basically, to negative about 22 cents. Is that
8 about right?

9 A. Yeah, it looks like the math is right.

10 Q. Do you think our friends in Louisiana
11 would agree with that?

12 A. I don't know what they are agreeing
13 with because I don't know what substantive
14 conclusion you are trying to draw, given how
15 these are being used.

16 Q. And for network we have got a
17 confidence interval of negative \$1.55 to
18 negative about 42 cents, right?

19 A. Yeah, it looks like you have done the
20 math right.

21 Q. And if you take a look at the range of
22 these confidence intervals, you will see that
23 there is a dividing line between those that are
24 positive and those that are negative.

25 But, in fact, all of your positive

1 coefficients are within each others' confidence
2 intervals, every single one of them. Isn't
3 that right?

4 A. Maybe. You can't really do that
5 comparison because there is a correlation that
6 you would have to account for. But, yes, as
7 far as the math that you have done, that's
8 true, it doesn't have any statistical meaning.

9 JUDGE FEDER: Mr. MacLean, you are
10 going off the screen to the right. Slide it
11 over a little.

12 MR. MacLEAN: Oh, I'm sorry. There we
13 go.

14 BY MR. MacLEAN:

15 Q. Basically what you've got here is a
16 four-way statistical tie for the top four in
17 your -- in your -- in terms of top four in
18 value coefficients; is that right?

19 A. No. You can't draw that conclusion
20 from the math that you have done, because there
21 you would have to account for the correlation
22 between -- I'm not trying to get too technical,
23 but you can't just compute the confidence
24 interval on each one and compare.

25 Q. Because there is some correlation

1 between them; is that what you are saying?

2 A. Right. You have to -- if you wanted
3 to -- if you are saying you want to test the
4 hypothesis that two of those coefficients are
5 equal, you would have to do that in a way that
6 accounts for the correlation between the
7 coefficients.

8 Q. Don't you -- don't you have separate
9 coefficients so that you can account for that
10 correlation?

11 A. I mean, if you had the underlying
12 correlation, yes. It is not on here and I
13 don't have it where I sit. And it is not
14 reflected by this comparison of the confidence
15 intervals.

16 But the relevant point is that the
17 purpose of the regression is to get the best
18 estimates and to compare those best estimates
19 to the Bortz survey. Right?

20 And the confidence intervals are
21 really only important if I have no other
22 information to compare it to, so I am testing a
23 hypothesis based on just the regression.

24 All that I take from the regression is
25 that these coefficients and values are

1 corroborative of Bortz, which in my
2 professional opinion would be really unlikely
3 to have a match between two totally different
4 analyses, if the analyses were not valid.

5 Q. Well, Bortz gives a positive value to
6 Canadian programming, right?

7 A. Right, it's a low but positive value.

8 Q. And that's quite inconsistent with the
9 idea of there being a negative value to
10 Canadian programming, right?

11 A. I mean, I would agree it's positive,
12 not negative. It is quite consistent with the
13 rankings and the things that I went through in
14 my direct testimony.

15 Q. Would you say that positive is
16 inconsistent with negative?

17 A. I mean, yes, if those two statements
18 -- those two words are inconsistent with each
19 other. I think saying that Canadian is one of
20 the smaller categories and the ranking is right
21 is what I take --

22 Q. Actually positive is an antonym of
23 negative, right?

24 A. That sounds right.

25 Q. And same with Devotional. Bortz, the

1 Bortz surveys give Devotional a positive value;
2 is that right?

3 A. That's correct.

4 Q. And you would agree with me that a
5 positive value is inconsistent with a negative
6 value for Devotional programming, correct?

7 A. Yeah. I would agree that it's -- yes,
8 they're antonyms, as you said. I think it is
9 consistent with the ranking and the relative
10 size, but I would agree that the value is not
11 negative.

12 Q. And do you -- do you find it, as an
13 economist, do you find it at all in accordance
14 with expectation that there would be a negative
15 value to network programming?

16 A. We talked about that at length. Given
17 the duplicative nature, I don't find it
18 surprising.

19 The key for me, though, is, as an
20 economist who does these sorts of regressions
21 all the time, the finding of a negative value
22 for a small category is consistent with what I
23 see regularly.

24 It indicates that for the smaller
25 categories, it can sometimes be hard to find a

1 positive value, if not that many people are
2 paying a high price for it.

3 Q. Just to close the loop on the
4 confidence intervals, as with the positive
5 confidence intervals, the confidence intervals
6 of all the negative coefficients also overlap
7 with one another, do they not?

8 A. With the same caveat about that not
9 being a statistically-meaningful comparison,
10 yes.

11 JUDGE BARNETT: Are you switching
12 gears, Mr. MacLean?

13 MR. MacLEAN: I am.

14 JUDGE BARNETT: Okay. Then let's take
15 our noon recess. We will be at recess until
16 1:10.

17 (Whereupon, at 12:11 p.m., a lunch
18 recess was taken.)

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1 AFTERNOON SESSION

2 (1:18 p.m.)

3 JUDGE BARNETT: Please be seated.

4 Mr. MacLean?

5 MR. MacLEAN: Thank you, Your Honor.

6 BY MR. MacLEAN:

7 Q. Dr. Israel, I'd like to now talk with
8 you about whether and to what extent your
9 regression corroborates or is corroborated by
10 Dr. Crawford's.

11 A. Okay.

12 Q. So if we could take a look at -- this
13 is Exhibit 2004, page 40, figure 16. It will
14 be up on the screen in a moment.

15 If we could blow up that figure. So
16 this is -- this is Dr. Crawford's estimation of
17 average marginal value of one distant minute by
18 Claimant category. Do you see that?

19 A. Yes.

20 Q. Okay. So -- and just to remind you,
21 you remember that Dr. Crawford's --
22 Dr. Crawford used a log-linear regression, so
23 he had to basically convert his logarithmic
24 coefficients to a value, but these were the
25 results of his -- following his conversion. Do

1 you recognize that?

2 A. I mean, I haven't studied this table
3 recently, but, yes, that looks right.

4 Q. Okay. So I'm going to focus here on
5 the bottom, the bottom line, the 2010 to 2013
6 average marginal value for all four years. Do
7 you see that?

8 A. Yes.

9 Q. Okay. So as you've seen, I put a lot
10 of time and effort into my high-speed graphics.
11 So -- but I'd like you to help me with the next
12 one.

13 Could you, in order, go through these
14 -- these marginal values, average marginal
15 values from highest to lowest, tell me -- tell
16 me what category it is and what the -- what the
17 stated value is?

18 A. From highest --

19 Q. Highest to lowest.

20 A. So Sports is first at .896. Then
21 Commercial with .134. Then Canadian with .112.
22 Then Program Suppliers with .064. Public with
23 .051. And Devotional with .030.

24 Q. Okay. Now let's take a look at
25 Exhibit 1003, that's your direct testimony,

1 page 18, Table V-1, which is your regression
2 results. And here you -- you don't need to do
3 a conversion because you used a linear
4 regression specification, but these -- these
5 coefficient results you've said represent your
6 average marginal value, correct?

7 A. Right. I mean, I think of them all as
8 relative to the other values, because it
9 depends what you're holding constant, but, yes,
10 they're my relative average values.

11 Q. Okay. Well, actually, I think you've
12 said that this is actually -- could actually be
13 read as dollars and cents, 4.84 for sports
14 programming, if we ignore the confidence
15 intervals, right?

16 A. I mean, again, holding everything else
17 constant, so, yes, I agree with that holding
18 everything else constant, but ultimately what I
19 would draw from them is relative values.

20 Q. Okay. So say -- let's do the same
21 exercise, read me the coefficient and the
22 category of programming from highest to lowest.

23 A. Do you want me just to do the six
24 again?

25 Q. Yes, the six -- the six categories.

1 A. So Sports is first with 4.836.
2 Commercial is second with 1.01. Public is
3 third with .660. Program Suppliers is fourth
4 with .469. Devotional is fifth with
5 minus .701. And Canadian is sixth with
6 minus .973.

7 Q. Okay. Can I have the ELMO, please.

8 So here are the results side-by-side.
9 Now, I see first you have -- you have -- we
10 have Sports and Commercial Television first and
11 second, in both -- in both columns, correct?

12 A. Yes.

13 Q. But in yours, you've got sports at
14 less than five times the marginal value of CTV.
15 In Dr. Crawford's, he has it about eight times
16 or close to eight times the marginal value of
17 CTV, correct?

18 A. Yes, the relative values are
19 different. I can't do the math, but that seems
20 roughly correct, 5 and something just below 8.

21 Q. And, of course, both you and
22 Dr. Crawford claim to have been -- to have put
23 these numbers into dollars and cents values.
24 So in just direct terms, your value for sports
25 programming is about five times what

1 Dr. Crawford's marginal minute -- value per
2 minute for sports programming is; is that
3 right?

4 A. And, again, because other things are
5 held constant, I really think the relative
6 values are what you can look at.

7 Q. Well, you have -- you have Public
8 Television third in order, right?

9 A. Correct.

10 Q. Dr. Crawford has it fifth in order,
11 second to last, right?

12 A. That's right.

13 Q. You have Program Suppliers fourth in
14 order -- you both have Program Suppliers
15 fourth, but you have it less than Public
16 Television and Dr. Crawford has it more than
17 Public Television, right?

18 A. Those two are flipped one spot, yes.

19 Q. You have Devotional fifth and
20 negative, correct?

21 A. Correct.

22 Q. Dr. Crawford has it fifth but -- I'm
23 sorry, last but positive. Correct?

24 A. Correct.

25 Q. And you've agreed with me already that

1 negative is inconsistent with positive, right?

2 A. Right. The logarithmic form is going
3 to give you positives for all of them.

4 Q. Well, that's -- I mean -- that's not
5 correct, but we'll -- we'll go on to the next
6 one.

7 CCG, you've got it strongly negative,
8 right?

9 A. Correct.

10 Q. It's supposed to be a point there.
11 Dr. Crawford has it strongly positive and, in
12 fact, third in order of relative marginal
13 value, correct?

14 A. He does have it third, yes.

15 Q. All right. You can take that down
16 now.

17 I want to talk a little bit about some
18 of the sensitivities -- you can take this down
19 too -- some of the sensitivity tests that were
20 conducted. You did discuss Dr. Gray's
21 sensitivity in which he eliminated all of the
22 minimum fee systems, right?

23 A. Among other changes, yes.

24 Q. And you -- and you said that by
25 eliminating all of the minimum fee systems, he

1 was in essence reducing -- taking away data,
2 reducing the amount of data that he was using
3 in the -- in the regression; is that right?

4 A. Yes.

5 Q. Did you know that Dr. Crawford's test
6 had a dummy variable for every single system
7 accounting period?

8 A. Yes. He used a different source of
9 identification. He looked within systems. I
10 looked across systems. That's why you get some
11 differences in numbers and it's rather striking
12 that these shares end up matching so well.

13 Q. And you're aware that by using a dummy
14 variable for every system accounting period, he
15 was essentially removing the influence of those
16 systems with a single subgroup?

17 A. As I said, his -- his methodology, I
18 think, by design was to look within system
19 across subscriber groups. So, yes --

20 Q. And thereby removing in essence the
21 influence of all data that contained -- that
22 was from a system containing only one
23 subscriber group, correct?

24 A. I mean, you can't look within those so
25 I would agree with that. I mean, I think it's

1 a substantial plus that he used a very
2 different source of variation than I did;
3 therefore, got different numbers as you showed
4 but got very similar shares.

5 Q. Well, similar shares. He gave
6 Devotional a positive share, right?

7 A. He gave it one of -- the lowest share
8 but a positive share.

9 Q. And you would have given Devotional a
10 negative share, had you calculated -- had you
11 computed negative shares, correct?

12 A. I mean, that's just not my
13 methodology, so -- and it hasn't been the
14 methodology when these linear regressions have
15 been used in previous iterations either.

16 Q. And when you say Dr. Crawford and you
17 got similar results, what you basically mean is
18 top-three matching, you had the -- you had the
19 same three systems -- same three categories in
20 the top three, right?

21 A. I mean, on the basis that I presented
22 in my direct testimony, so similar matches for
23 the top three and similar overall ranking.

24 Q. Now, Dr. Erdem also did some
25 sensitivity testing on your -- on your

1 regression, correct?

2 A. He -- yes, he made some changes to the
3 regression.

4 Q. Okay. Well, one of his changes was to
5 test for non-linearities, correct?

6 A. He added an extra set of variables to
7 the regression. It's not a test for
8 nonlinearity I've seen in 30 years of doing
9 this.

10 Q. Well, what did you do to test for
11 non-linearities?

12 A. I mean, as I indicated, my method was
13 to use a linear regression, that has been used
14 in the past. That's -- my methodology was to
15 test for the best linear predictor, consciously
16 to keep it simple and to match what had been
17 done and accepted in prior versions of the
18 proceedings.

19 Q. So is that an answer that you did not
20 test for nonlinearity?

21 A. Right, I maintained a linear model
22 throughout.

23 Q. How would you test for nonlinearity,
24 if you were to look for -- look to see if there
25 was nonlinearity?

1 A. I mean, you could try other functional
2 forms. I've seen people do things like,
3 instead of linear numbers, put a log number on
4 the right-hand side. Something like you could
5 add a -- you know, something like that,
6 something that's an actual function that's
7 sometimes used in economics.

8 What Dr. Erdem did was add logarithmic
9 variables on top of linear variables, something
10 that I've never seen and I think would probably
11 break most regression specifications.

12 Q. Well, I think he actually added
13 quadratic terms, didn't he?

14 A. No, he added logs.

15 Q. If you add a linear -- a log term
16 keeping the linear term in, that allows
17 curvature, doesn't it?

18 A. I mean, it doesn't match any
19 functional form that I've ever seen justified
20 as a matter of economics. A linear function
21 measures a change in levels. A log function
22 approximates a change in percentages.

23 Q. Did you conduct any tests for the --
24 for sensitivity to influential observations?

25 A. I mean, I certainly noted that there

1 were influential observations and, therefore,
2 checked the data to make sure the data were
3 reliable. It's what you want to do. If you
4 see there are certain large observations, you
5 want to make sure the data don't have errors.
6 You certainly don't want to remove the most
7 important observations as Dr. Erdem did.

8 Q. Wouldn't sensitivity -- wouldn't it be
9 important to you to know if your regression was
10 sensitive to influential observations,
11 regardless of whether you make the decision to
12 discard those observations or not?

13 A. All regressions are sensitive to
14 influential observations. If you have a larger
15 data -- observations in your data, they're
16 going to matter. The question is, is there any
17 basis to think those observations are wrong?

18 Q. Well, it's not just wrong. Couldn't
19 an influential observation -- couldn't
20 sensitivity to influential observations be
21 indicative of the possibility of a missing
22 variable?

23 A. Generally, it's indicative of the fact
24 that those observations contain a lot of
25 information. So in my view, if you have data

1 and you're trying to measure a relationship
2 between fees and programming across the
3 systems, you have certain observations that are
4 informative because they are large or they have
5 more signals or for any reason, then you make
6 sure those data are correct, and if they are,
7 you leave them in because they're highly
8 informative.

9 And I would note that the sources
10 Dr. Erdem's cites agree with me on that topic.

11 Q. I think Dr. Erdem also agreed that --
12 that it's not appropriate to simply throw out
13 influential observations simply because they're
14 influential, right?

15 A. That's the test he performed on my
16 regression.

17 Q. Well, he was testing sensitivity,
18 wasn't he?

19 A. Every regression that has ever been
20 run is going to be sensitive to the removal of
21 influential observations.

22 Q. Have you ever -- are you familiar with
23 the illustration called Anscombe's quartets?
24 It's used in statistics sometimes.

25 A. I don't recall it. No, I don't think

1 so.

2 Q. Let me put it on the screen and see if
3 you recognize it. You might recognize it from
4 statistics 101 or something.

5 Have you ever seen something like this
6 before (indicating)?

7 A. I don't know if I've seen it in
8 exactly this form, no. I mean, I can recognize
9 what's being done here in terms of fitting --
10 it looks like it's fitting a line in various
11 patterns in the data.

12 Q. Well, the first one would be an
13 example of sort of a typical linear regression
14 line through a series of data points, right?

15 A. I mean, it's an example of fitting a
16 line to those points, yes.

17 Q. The second one would show basically a
18 quadratic curve with an average regression line
19 running through it, right?

20 A. Right. As I said before, I would say
21 that's fitting the best linear predictor to
22 those points, and they appear to have a curve
23 to them, yes.

24 Q. Right, but when you look at the actual
25 data in this example data set, there's clearly

1 a curve, but the line is going to draw just a
2 linear regression through there, right?

3 A. I agree. It's going to fit the line
4 -- what linear regression does is fit the line
5 that best predicts the points. And I agree
6 those points appear to have a curve.

7 Q. Okay. And then down here in the third
8 example, we see a very closely -- you know, a
9 very close straight line of points with one
10 outlier up here, throws off the whole
11 regression line in that direction. Do you see
12 that?

13 A. I mean, I don't agree with the
14 characterization, but I do see that there is
15 one point that is different from the rest.
16 And, again, if I saw that point in the data, I
17 would check to make sure that was a valid
18 observation in the data.

19 And if so, it's informative.

20 Q. Well, and there could just be
21 something different about that point that could
22 have been captured with a -- with a control
23 variable, right?

24 A. I mean, in theory, anything is
25 possible. But if you have a specification that

1 accounts for the relevant pieces and that's a
2 differential observation, you certainly would
3 want to include it in a calculation.

4 Q. And then in the fourth example here,
5 we've got a bunch much data points that are not
6 correlated at all with a single, basically,
7 influential observation that governs the entire
8 regression line, right?

9 A. I mean, yes, because in that case,
10 what you're trying to do in a regression is
11 look at the relationship of Y, the vertical
12 stuff, on X. So you actually only got one dot
13 that gives you any information in that last
14 regression because there's only one value that
15 has a different X.

16 Q. Right. And you didn't test for any
17 non-linearities, right?

18 A. I mean, I maintained the linear,
19 fitting the linear relationship. That's
20 correct.

21 Q. Your regression is sensitive to
22 influential observations, and yet you didn't do
23 any analysis to -- about why there were
24 influential observations, right?

25 A. I don't know what you mean by no

1 analysis. They're influential because of their
2 size, because of the systems or the signals
3 they chose to carry. I checked to make sure
4 there were no errors in the data.

5 Throwing out influential observations
6 is changing the data, right? I mean, an
7 analogy would be if I test a drug on 1,000
8 people and only 2 of them die, those would be
9 highly influential observations. You wouldn't
10 want to remove them from your analysis.
11 They're important to the information that you
12 gained.

13 Q. I don't think anybody is disagreeing
14 with you there. But wouldn't you want to know
15 how sensitive a regression is to an influential
16 observation?

17 A. As long as the observations are
18 correct, I would want to learn from that
19 information.

20 Q. Well -- now, you also conducted
21 sensitivity in which you, as you put it, threw
22 in additional variables, right?

23 A. Threw in? I think one of my
24 sensitivities looks at controls for DMA. One
25 of them adds another control for the 3.75

1 systems. And one of them just looks at sports
2 versus other categories.

3 Q. So what makes your sensitivity so much
4 better than Dr. Erdem's?

5 A. I mean, they're not adding variables
6 for no apparent reason or dropping data that
7 provides information.

8 Q. So what were your reasons for adding
9 the variables you added?

10 A. DMA, you might be concerned -- I mean,
11 you have raised questions about whether there
12 are geographic differences that are largely
13 driving things. So it -- you know, that would
14 use another form of identification that just
15 looks within the DMA. So I was interested to
16 see if that would be -- would give a different
17 sort of answer.

18 The 3.75, I mean, obviously, that's
19 part of the formula. So you want to make sure
20 that you're accounting for the formula. And
21 Sports versus other is obviously just a -- you
22 know, a direct test on the relative value of
23 Sports. So each of them is testing for
24 something specific and economic, as opposed to
25 just dropping observations or throwing in

1 variables that don't have any particular
2 economic meaning.

3 Q. And I believe you testified in your --
4 in your written report that your conclusions
5 are not affected by these reasonable changes in
6 model specifications?

7 A. That sounds right.

8 Q. And here at Table C-I-3, that's
9 C-Roman numeral I-3, are the results of your
10 sensitivity regressions, correct?

11 A. Yes.

12 Q. And in model 3 here -- and just as a
13 reminder, model 1 is your principal
14 methodology, correct?

15 A. Yes.

16 Q. And then model 3 is your model in
17 which you include an indicator variable by DMA,
18 correct?

19 A. Yes.

20 Q. Model 3 is, in fact, your only
21 regression that specifically controls for
22 geography; is that right?

23 A. I mean, it has -- it's the only one
24 that controls DMA by DMA. Other ones have
25 variables that differ by geography.

1 Q. But none that control specifically by
2 geography; is that right?

3 A. I mean, again, none that -- no other
4 ones that control for the specific geographic
5 location, correct.

6 Q. So if we take a look at your
7 regression results here, you still have
8 positive result for Program Suppliers, right,
9 positive and statistically significant, right?

10 A. Yes.

11 Q. And you still have positive and
12 statistically significant result for public
13 broadcasting, right?

14 A. Yes.

15 Q. Still have a negative coefficient for
16 Devotional programming?

17 A. Yes.

18 Q. Still have a negative coefficient for
19 Canadian programming?

20 A. Yes.

21 Q. But if we compare across, comparing
22 what you've got for model 3 and your original
23 model, you'll see that your Program Suppliers
24 coefficient is now about 50 percent higher. Do
25 you see that?

1 A. Yes.

2 Q. Do you think Program Suppliers would
3 agree that your conclusions aren't affected by
4 this reasonable change in the model
5 specification?

6 A. I mean, again, the question I'm asking
7 ultimately is do the rankings and the shares
8 generally support Bortz? I'm sure they would
9 say that was higher, but I don't take that as
10 changing the overall rankings or the
11 corroboration.

12 Q. Public Television also, about
13 50 percent higher in your -- in your model than
14 in your model 1, correct?

15 A. Yes.

16 Q. You think Public Television would
17 agree that your conclusions were not affected
18 by this reasonable change?

19 A. Certainly, the quantitative
20 conclusions of the regression are different. I
21 don't think it changes the overall
22 corroboration.

23 Q. Well, you say quantitative change. I
24 mean, we're talking numbers here. It's all
25 quantitative, right?

1 A. Well, I'm also looking at relative
2 ranks and things, but, yes, I agree that column
3 3 is somewhat different. I mean, as you said,
4 column 3 includes a large number of dummy
5 variables. We talked earlier about how I'm not
6 surprised that there's some statistical
7 insignificance in that. But what -- you know,
8 what I take from it is even with that large
9 number of dummy variables, the relative ranks
10 are different, but not, you know, reversed or
11 dramatically different.

12 Q. Well, you say -- you say relatively
13 large number of dummy variables or -- large
14 number of dummy variables. Let's be precise.
15 You've got 210 dummy variables, right?

16 A. That sounds right.

17 Q. 210 DMAs, so you've got 210 dummy
18 variables?

19 A. I don't remember the count, but that
20 sounds right.

21 Q. Okay. A lot less than 7300 dummy
22 variables, would you agree?

23 A. Yes, although if you're referring to
24 Dr. Crawford's regression, he uses subscriber
25 group level data so he has a lot more

1 observations than I do.

2 Q. Sure. Well, how many observations did
3 you have?

4 A. I don't remember as I sit here.

5 Q. Okay, let's --

6 A. Six accounting periods times the
7 number of systems.

8 Q. Okay. Let's take a look at your
9 summary, your summary data, and we can -- we
10 don't need to guess.

11 Summary statistics, page A-6 of
12 Exhibit 1003. Let's just go to page B-1, which
13 is the -- which is the regression results.

14 Oh, actually, never mind, leave it on
15 the ELMO. I've got it right here. What am I
16 doing. Observations, 5,465. Right?

17 A. Correct.

18 Q. Okay. I'm sorry. I should have gone
19 right to that. Okay. So you've got about
20 5,465 observations. And how many variables do
21 you have with the inclusion of -- of DMA fixed
22 effects?

23 A. I mean, there's going to be 210 DMAs,
24 plus 6 accounting periods, plus -- there's
25 probably 230 some.

1 Q. 230 some, okay. So way more -- you've
2 got way more than ten observations per -- per
3 variable in your regression, right, even in
4 your fixed effects regression?

5 A. That's true, although it's going to
6 vary, it's going to matter a lot how many
7 different systems you have in a given DMA,
8 which DMAs that you're able to use and not use.
9 But, yes, and as far as total counts, I agree.

10 Q. And are you familiar with the one in
11 ten rule in statistical analysis?

12 A. I don't believe there's any such rule.
13 Some people have rough guide rules of thumb
14 about how many observations per variable, but I
15 don't think those are ever given any credit.

16 Q. Okay. But you've got plenty of
17 observations per variable when you're using 210
18 dummy variables for -- by DMA, right?

19 A. There's no problem with the overall
20 number of observations relative to variables.
21 The DMA fixed effects might change which
22 specific DMAs are driving the results, but
23 there's no problem with the overall -- what's
24 called degrees of freedom. There's plenty of
25 data.

1 Q. Okay. So, I mean, you agree here that
2 your results when you control for DMA, they're
3 actually quite a bit better for Program
4 Suppliers and Public Television, right?

5 A. I mean, they certainly change for
6 those two numbers, yes.

7 Q. And, I mean, let's be -- let's be
8 honest here. We've -- and, you know, who are
9 we if we can't say nice things about our
10 opponents. Public Television, look, they've
11 actually got -- we make fun of them sometimes,
12 but they've some good stuff, right? I mean,
13 can you imagine subscribers might value Public
14 Television programming?

15 A. I certainly think subscribers value
16 it, yes, and I do enjoy the programs.

17 Q. Absolutely. And similar to
18 Devotional, this is one of the program
19 categories that subscribers value so much that
20 they are willing to donate their own money just
21 to keep it on the air, right?

22 A. Again, this is beyond much of what
23 I've studied but, yeah, I agree there are
24 people who value it very much.

25 Q. All right. Program Suppliers, I mean,

1 we -- we use general interest as sort of a
2 disparaging term, but, I mean, there's a reason
3 this is a general interest programming, right?
4 Yeah.

5 A. I mean, certainly, all of this
6 programming has value. The question is how
7 much value to specific cable systems, which is
8 what we're here to study.

9 Q. Now, you've got this strongly negative
10 result for Canadian, but think about this,
11 okay? Can you imagine living in a foreign
12 country or a country foreign to where your
13 family is, how much you would value programming
14 from -- from your country of origin?

15 A. I mean, not particularly because I
16 haven't done it, but, yes. Again, I agree that
17 the programming certainly has value.

18 Q. But now let's take a look at what your
19 control for geography does to Sports and
20 Commercial Television. Sports becomes
21 statistically insignificant; isn't that right?

22 A. I mean, the standard error goes up
23 slightly because of the addition of the
24 additional fixed effect, so, yes.

25 Q. The standard error goes up slightly;

1 is that what you said?

2 A. From 2.46 to 3.16.

3 Q. Well, if you would like to, we can do
4 the -- we can do the confidence interval on
5 that.

6 A. I mean, you can do it. Confidence
7 intervals on sensitivities -- I mean, now we're
8 even one level deeper. The point of a
9 sensitivity is generally to see if there is
10 a -- how sensitive is coefficient is.

11 Q. So the confidence interval here on --
12 for sports programming is going to be between
13 negative 6.75 up to positive 9.651. Does that
14 look about right?

15 A. Again, you've done the math right,
16 but --

17 Q. Thank you.

18 A. -- the concept of a confidence
19 interval is as though that's the only piece of
20 information you have.

21 Q. Well --

22 A. It's almost exactly the same number as
23 4.8. That's what you take from the --

24 Q. What you're really saying here is with
25 confidence you can say that sports is somewhere

1 in the range of the least valuable to the most
2 valuable category of programming when you
3 control for geography?

4 A. Non-remotely, right, because there's
5 four different regressions here with four
6 different sets of variables, all of which have
7 sports ranked first.

8 Q. Well, which --

9 A. The odds of that happening by chance
10 are preponderously low.

11 Q. Which of these regressions has the
12 highest R-squared -- has the best R-squared?

13 A. I mean, you add a bunch of DMA fixed
14 effects, you're going to get a higher
15 R-squared. The notion of choosing a regression
16 to maximize R-squared is given zero credit in
17 economics.

18 Q. It means -- you chose this model as a
19 reasonable model, right?

20 A. I chose it as a sensitivity check to
21 add DMA controls.

22 Q. And you chose it because there is a
23 reasonable econometric reason to do it, right?

24 A. I think -- I thought it was reasonable
25 to add those controls and look to see what the

1 overall pattern was, yeah.

2 Q. Well, look what happens to CTV
3 programming. They go from strongly positive
4 and statistically significant to negative and
5 statistically insignificant?

6 A. Right.

7 Q. Do you think CTV would agree that your
8 -- your conclusions don't change based on the
9 -- your sensitivity here?

10 A. I think they would probably think that
11 one changes a lot, and say when it's the most
12 localized of programming, you probably
13 shouldn't control for every single DMA.

14 Q. What are the only two categories here
15 of programming that have a positive and
16 statistically significant coefficient when you
17 control for geography?

18 A. Under that regression, it's Program
19 Suppliers and Public Television.

20 Q. Program Suppliers and Public
21 Television are the only program categories that
22 have a positive and statistically significant
23 coefficient under this control for DMA; is that
24 right?

25 A. Right. Again, I think what's most

1 important is the extent to which coefficients
2 match across columns.

3 Q. Okay.

4 A. And so I don't think it's valid to do
5 a hypothesis test or a confidence interval on
6 one regression when you're looking at four.
7 It's just not the way to use the tool. But,
8 yes, that's -- in that column, that is what it
9 says.

10 Q. Can we take a look at Exhibit 6036,
11 which is Dr. Gray's direct testimony, page 19.
12 Okay. So I'm putting up in front of you --
13 this is -- these were the shares from
14 Dr. Gray's, MPAA's witness, Dr. Gray's shares.

15 A. I see that.

16 Q. And if you go through every year,
17 2010, '11, '12, '13, and who are the two top
18 shares in each of those years?

19 A. It looks like Program Suppliers and
20 Public.

21 Q. Every year, right?

22 A. It looks like it, yes.

23 Q. And so on the top two comparison
24 methodology, one interpretation of your control
25 for DMA is that you've just corroborated

1 Dr. Gray's results, haven't you?

2 A. Not remotely. Even if you want to
3 talk about significance of a single column, you
4 don't compare significance to get important to
5 compare coefficients. Significance -- or
6 confidence intervals tell you something about
7 the precision of those coefficients, but you
8 can't step from a statement about statistical
9 significance to a statement about magnitude of
10 value.

11 Q. Well, other than JSC, whether you talk
12 about the -- the absolute value of that
13 coefficient or whether you pay attention to the
14 fact that it's actually showing no
15 corroboration, you're matching two of the top
16 three categories, aren't you?

17 A. I think I lost something in your
18 question. Not at all based on the statistical
19 significance measure. You could look at the
20 coefficients, and then I would encourage you to
21 look at the overall body of results that I
22 presented and the shares that I presented.

23 Q. Certainly, one interpretation of your
24 DMA control test is that you're actually
25 matching the top two of Dr. Gray's shares based

1 on his analysis, correct?

2 A. Again, no. You can't -- you can
3 question the significance of the sports
4 coefficient, but you can't compare shares,
5 which are a measure of value times minutes, to
6 a question of which coefficients are or are not
7 significant. Shares are about the size of the
8 coefficient.

9 Q. And, of course, you are aware that
10 Dr. Gray, when he calculated these shares, was
11 missing a large body of his data, correct?

12 A. I believe other people have commented
13 on that, yes.

14 Q. Let's go back to the ELMO here. So in
15 spite of your results, when you control for
16 DMA, I take it you would still say that Bortz
17 is the best methodology?

18 A. I think it's the appropriate
19 methodology to use in the case, yes.

20 Q. Is Bortz a better methodology than
21 your regression methodology?

22 A. I mean, they answer different
23 questions, as I've said. I think -- as I
24 mentioned earlier, I think because the
25 regression, you know, has to learn what it can

1 learn from kind of discrete and a limited --
2 you know, a discrete set of choices that these
3 systems make, I think Bortz gives you a more
4 refined measure because it asks people directly
5 for their valuations.

6 So I think Bortz directly measures the
7 valuations, and the purpose of a regression is
8 to make sure those valuations are consistent
9 with what's in the marketplace.

10 Q. Okay. Would you say that Bortz is a
11 better methodology than these regressions even
12 though, for example, the last warm-up question
13 in the -- in the -- in the Bortz survey was
14 about cost instead of value?

15 A. I mean, yes. Again, given that the
16 ultimate question is the relevant question and
17 its corroborated by the evidence in the
18 marketplace.

19 Q. Would you say that Bortz is better
20 than the regression methodologies, even though
21 in the WGNA program list, it lists the Chicago
22 Cubs, the Chicago White Sox, and the Chicago
23 Bulls in the WGNA program listings?

24 A. Now I think I've lost your thread. I
25 mean, ultimately, those sorts of surveys issues

1 I haven't delved into. The way I have
2 addressed whether those sorts of things matter
3 or not is to see whether it matches the
4 regression methodologies that I've used and
5 that have been used in this proceeding in the
6 past.

7 Q. Do you think that Bortz is better than
8 the regression methodologies even though after
9 they made these changes, the Sports share went
10 up several points and the Devotional share went
11 down several points?

12 A. I mean, again, I think Bortz is asking
13 the relevant question. And what I can bring to
14 the table is that when you use the basic
15 regressions that are -- that I use and that
16 have been used in the past, it's corroborated
17 with the market data. That's really what I can
18 add to the discussion of how valid the survey
19 is.

20 Q. Do you think the Bortz survey is a
21 better methodology even though it leaves this
22 WGNA non-compensability issue just enough
23 unaddressed so that they can argue with a
24 straight face that the Devotional shares should
25 be reduced further?

1 MR. LAANE: I object to the question,
2 Your Honor.

3 JUDGE BARNETT: Sustained.

4 BY MR. MacLEAN:

5 Q. In spite of these issues with the
6 Bortz surveys, could you explain to the Judges
7 why they should use the Bortz survey instead of
8 a regression in which the sports share is
9 statistically insignificant?

10 A. First of all, the sports share is
11 significant in my main regression and highly
12 corroborated in value across all my
13 regressions.

14 But, second of all, as I've explained,
15 the Bortz survey asks the direct relative
16 valuation question. It gets -- it's asking the
17 question that I believe this proceeding needs
18 to answer. And it's corroborated in its
19 rankings and its top three valuations by two
20 separate regression analyses.

21 MR. MacLEAN: Thank you, nothing
22 further.

23 MR. COSENTINO: Your Honor?

24 JUDGE BARNETT: Mr. Cosentino.

25 MR. COSENTINO: Thank you.

1 CROSS-EXAMINATION

2 BY MR. COSENTINO:

3 Q. Good afternoon, Doctor.

4 A. Good afternoon.

5 MR. COSENTINO: I'm sorry, Your Honor.

6 Are you ready for me to proceed?

7 BY MR. COSENTINO:

8 Q. So we generally have been referring to
9 your work as a regression, right? But that's
10 -- we refer to the Israel regression, the
11 Crawford regression, the George regression,
12 Waldfogel regression, but it's more than that,
13 correct? Regression is just a tool within the
14 whole analysis?

15 A. That's fair.

16 Q. Okay. And just trying to get my
17 technology up. All right. We're going to do
18 this without it.

19 A. I'll resist any joke about it being a
20 distant signal.

21 (Laughter.)

22 JUDGE FEDER: You didn't resist very
23 hard.

24 (Laughter.)

25 THE WITNESS: Fair point.

1 BY MR. COSENTINO:

2 Q. So -- all right. So, okay.

3 In fact, the process that you use
4 is -- and help me understand this -- you
5 probably research the task, you build a model,
6 you collect your data, you run your regression,
7 and then you do your valuation? Is that the
8 kind of process?

9 A. You mean what I did in this specific
10 case or what I would do?

11 Q. Sure, in this particular case.

12 A. I mean, this case is somewhat unique.
13 That's why I asked because there was a
14 preexisting record of regressions in the -- in
15 the previous proceedings. So in this case, I
16 researched it, as you said, first, but that was
17 heavily guided by sticking quite closely with a
18 small number of changes to previous regressions
19 so that I was using a tool that had previously
20 been useful and obviously wasn't creating
21 something to achieve some specific purpose.

22 Q. Okay. So --

23 A. But other than that I would agree, I
24 researched it, including the previous
25 proceedings, and then went on to collect the

1 data, run the regression, and evaluate the
2 regression.

3 Q. All right. So in the research, you
4 looked at Waldfogel's regression analysis?

5 A. Yes.

6 Q. Okay. And his testimony?

7 A. Yes. It has been a little while since
8 I read his testimony, but definitely I did.

9 Q. But this was back when you were coming
10 up with your idea of how you were going to
11 approach this?

12 A. Right. I mean, I was very consciously
13 attempting to link back to what he and
14 Dr. Rosston had done.

15 Q. Okay. And you read Dr. Rosston's
16 written testimony?

17 A. Yes. Again, those have both been a
18 while so my recollection will be fuzzy, but,
19 yes, I did.

20 Q. Okay. Did you read the decisions of
21 the CARP and the CRB with respect to those
22 regressions?

23 A. Yes, I believe so. I believe I read
24 all of them, but, again, that was all very
25 early.

1 Q. Okay. Do you recall what else you
2 read at that time?

3 A. I really don't remember a full list of
4 what I read. I know I read Waldfogel and
5 Rosston and the decisions. Nothing else is
6 coming to mind.

7 Q. Okay. Did you read any of the old
8 Bortz reports?

9 A. I don't think I read the Bortz -- the
10 previous Bortz reports, but that might be
11 wrong. It's possible early on I reviewed -- I
12 certainly had reviewed some of the shares and
13 the results, but I don't remember if I read an
14 entire Bortz report from before.

15 Q. Okay. And then you developed your
16 model at that point to emulate, was it
17 Waldfogel's model?

18 A. Yes, that's fair.

19 Q. Okay. Is it -- and the differences
20 between your model and Waldfogel's model, can
21 you summarize those?

22 A. Sure. There's just a few. And
23 they're pretty minor differences. One of them
24 was really not a difference in the model, just
25 a difference in how the minutes were counted

1 because since the last proceeding, there has
2 been this -- I think a change in the law and
3 therefore an increased use of subscriber
4 groups, as I understand where the system only
5 has to pay for the subscribers actually
6 receiving the content.

7 I used a prorated minutes measure that
8 accounted for what percentage of the
9 subscribers received the distant signal. I
10 also -- again, not really a change to the model
11 but just to the data -- used 28 days of
12 programming guides to get the minutes mix as
13 opposed to 21.

14 And then one more -- I added a control
15 variable, basically, for the network minutes.
16 I think he had had just a low-power bucket but
17 not anything else as separate from the
18 categories. But I also added a network
19 control. Those are the ones I remember.

20 Q. Okay. And I wanted to ask you about
21 within the model, the purpose of the -- the
22 purpose of the regression approach, right, I
23 think you said you want to learn from choices.
24 Do you recall?

25 A. Yes.

1 Q. Okay. And what are the choices we
2 want to learn from?

3 A. What -- I would say what signals and
4 then ultimately what types of content systems
5 make, what they choose to carry.

6 Q. Okay. So what cable system operators
7 decide to carry, those are the choices that are
8 relevant?

9 A. Correct.

10 Q. Okay. And the model should reflect
11 the environment in which those choices are
12 made?

13 A. I'm not sure I understand the
14 question. I mean, generally, it should be
15 built to reflect the factors that affect the
16 price on the choices.

17 Q. Okay. But it should reflect what
18 choices are available; would you say that?

19 A. I mean, I think it should reflect the
20 choices that are made. I think the choices
21 that are made indicate the value that people
22 put on the content. So I'm not sure what to
23 say beyond that.

24 Q. Okay. Now, we mentioned -- you
25 mentioned earlier on direct that you understood

1 that the Canadian signals could not be carried
2 throughout the country. Is that correct?

3 A. Yeah. My general understanding is
4 there is a Canadian zone in which those signals
5 are -- I guess I'm not sure of the exact lines
6 of the law, I'm not a lawyer, but I think
7 they're at least generally and perhaps
8 completely available within a Canadian zone.

9 Q. Okay. And not available outside the
10 Canadian zone?

11 A. My recollection, I think, is they
12 can't be carried under the compulsory license
13 outside the Canadian zone, but, again, I'm not
14 a lawyer. So I may have the details of the law
15 wrong, but that's my general understanding.

16 Q. No, and I think that's right.

17 So a decision by Canadian -- by a
18 cable system within the Canadian zone to carry
19 a Canadian signal is one of these choices that
20 you're trying to document, right, and learn
21 from?

22 A. I would say yes, but also the
23 decisions made by all the systems.

24 Q. Okay. And so there are many cable
25 systems within Canadian zone. Not all of them

1 carry Canadian signals. And that tells us
2 something about how they value Canadian
3 signals, correct?

4 A. I agree, those choices tell us
5 something, yes.

6 Q. Okay. Now, for systems that are
7 outside the Canadian zone, do the cable systems
8 have a choice to carry a Canadian signal?

9 A. No. I mean, in the way I interpret
10 the model, that would mean that's one of the
11 many reasons why they don't put value on that
12 content because it's not something they're
13 legally allowed to carry.

14 Q. Well, is that a lack of value or lack
15 of choice?

16 A. I'm not sure as an economist I draw a
17 distinction. I think what I want to understand
18 is what content people pay for for any of the
19 various reasons they choose to carry it, right?
20 So it might be they don't carry stuff outside
21 the Canadian zone because they can't. It might
22 be because some people in more distant markets
23 don't carry a signal because it's too far
24 distant.

25 I think ultimately -- that's why I

1 said what I said earlier; ultimately, I think
2 what's relevant economically is what they
3 choose to carry, and one of the reasons they
4 might make that choice or not make that choice
5 might be regulatory restrictions.

6 Q. But if there's a regulatory
7 restriction, it's not a choice, is it?

8 A. I mean, again, maybe that's a legal
9 distinction. As an economist, the way I think
10 about it is people carry what has value for
11 them and there's various reasons why they may
12 or may not carry -- I generally don't try to
13 control for every reason why they do or don't.
14 I just try to see what people do and,
15 therefore, on average, which different systems
16 have value for different content.

17 Q. You --

18 A. I take your point legally. As an
19 economist, there are so many different reasons
20 why systems might make that choice, that I'm
21 not trying to distinguish each reason. I'm
22 just trying to understand what they carry and
23 what they pay for what they carry. And if one
24 of the reasons is a legal reason, that's one of
25 the reasons.

1 Q. All right. There was an example that
2 was used earlier last week by an economist of a
3 signal in Windsor and a signal in Detroit.

4 A. Okay.

5 Q. And both are carried, for example,
6 within the Canadian zone by cable systems.

7 A. Okay.

8 Q. And none are carried outside the
9 Canadian zone.

10 A. Okay.

11 Q. Now, do we know more about the cable
12 system operators' interest in the Detroit
13 signal which can be carried outside the
14 Canadian zone but is not, than we know about
15 the Windsor signal, which can't be carried
16 outside?

17 A. I mean, we have one more reason that
18 might apply to the Windsor signal. It might be
19 that a system doesn't want to carry either or
20 has reasons why they do or don't want to carry
21 Detroit. But I would say in each case we know
22 that systems that choose not to carry it aren't
23 paying for it.

24 And I would agree that in the case of
25 Windsor, we have one more potential explanation

1 for that.

2 Q. Okay. But you haven't modeled
3 anything that would take that into account in
4 your model?

5 A. I mean, I don't think I agree with
6 that. I think what I've modeled in all these
7 cases is the decisions that are made and,
8 therefore, the average valuation.

9 So if the average valuation in the
10 case of Canadian signals is a mixture of the
11 Canadian zone that can carry it and has value
12 and, I agree with you, a number of non-Canadian
13 zones that can't carry it and, therefore, place
14 zero value on it, I think what I'm computing is
15 that overall average.

16 I don't think that's substantively
17 different, by the way, from -- you know, just a
18 different regression methodology, but it's not
19 substantively different from modeling the
20 Canadian zone and modeling the rest of the
21 country, getting zero for one and a positive
22 number for the other and averaging the two.

23 I mean, I think that's what Dr. George
24 has done. And I don't think those are
25 answering different questions. I just think --

1 I think there's other differences in my
2 methodology and Dr. George that explain why we
3 get different answers.

4 Q. All right. Well, let's move on then
5 to that. One of the next steps in this process
6 is gathering your data, right? Now that you've
7 got a model, you need to load up your data.

8 In your report, you talk about getting
9 your data on program classifications from TMS
10 Gracenote, correct?

11 A. Well, I got the list of programming
12 from TMS Gracenote. So that -- that's like a
13 channel guide you would see on your TV. And
14 then from that, working with Mr. Trautman and
15 Mr. Klein and my team working with him, we used
16 those program listings to -- we classified the
17 programs that were listed and, therefore, got
18 the mix of programming on each signal.

19 Q. All right. Now, after the direct
20 cases in this proceeding were filed, several
21 parties amended or corrected their
22 categorization. Dr. Crawford corrected his,
23 Dr. George adjusted hers, and eventually, I
24 believe, Dr. Erdem modified his list of
25 programs that appeared on Canadian signals.

1 Did you review that?

2 A. I mean, I recall that Dr. George had a
3 different list or some differences from mine in
4 the Canadian signals. As far as the timing of
5 when people modified their classifications, I
6 mean, I don't remember. We -- we took care to
7 classify using the TMS data up front, and I
8 stuck with those classifications.

9 Q. Okay. Did you ever review any of the
10 data from the Canadian Radio, Television, and
11 Telecommunications Commission?

12 A. I personally did not. I don't know if
13 the team did or not. I do know that my
14 analysis used our TMS-based classifications
15 throughout.

16 Q. Okay. Eventually, Dr. George filed a
17 rebuttal which indicated that about half a
18 million minutes of programming -- I think that
19 was her top 50, amounted to over half a million
20 minutes of programming, were misclassified in
21 your regression model.

22 A. Right.

23 Q. Did you correct your regression model
24 after that?

25 A. We talked about it on direct. What I

1 did was use those classifications as a test to
2 see if they changed my results. And they --
3 basically none of the estimated coefficients or
4 shares moved by more than a percentage point or
5 so.

6 So I did not change my original
7 classifications, but I checked to see if that
8 made a material difference.

9 Q. Okay. But you didn't -- I mean,
10 that's not available anywhere for anyone to
11 look at, right?

12 A. I mean, it only came from Dr. George
13 in her rebuttal. So I tested once she put that
14 in her rebuttal testimony.

15 Q. Okay. After you've assembled your
16 data, then you run your regression and that
17 gives you a -- basically this coefficient of
18 interest, which is essentially a price, right?

19 A. I think of it as a value, really,
20 because it's being driven by the demand side
21 choices. So I think it's indicating the amount
22 that people pay given the regulated pay
23 structure and, therefore, the value they must
24 put on the content, if they're willing to pay
25 that much and still carry it.

1 Q. It's a value per minute?

2 A. Given that I measure things in
3 minutes, it's really the value per these pro
4 rated minutes, but, yeah, I think it's fair to
5 call it a value per minute.

6 Q. Okay. And then you multiply it by
7 compensable minutes to determine your shares,
8 correct?

9 A. Right. And as I mentioned earlier,
10 you're controlling for a bunch of other stuff.
11 So I think the right way to think of them is
12 relative values per minute. And I think the
13 thing you can best do with them is use them to
14 figure out relative values and, therefore,
15 relative shares.

16 Q. Okay. But by themselves, these
17 coefficients don't -- I mean, you're not
18 suggesting we compare the coefficients and
19 determine relative value based on those, right?

20 A. Only relative value per minute. You
21 then have to multiply by the number of minutes
22 to get the share.

23 Q. Right.

24 A. So you have to multiply the value
25 times the units, basically, the value per unit

1 times the units.

2 Q. Right. Because the units -- you know,
3 the typical valuation process is how many of
4 something do you have and what are they worth
5 each?

6 A. Precisely.

7 Q. All right. Now, your results come out
8 with a negative coefficient for Canadians, for
9 Canadian Claimant content. Dr. Waldfogel's
10 results came out with a 3.3 percent share for
11 Canadian Claimants.

12 Do you recall that?

13 A. I didn't recall the exact number
14 but --

15 Q. Okay. Well, I'd show it to you. But
16 I think it's actually in your testimony.

17 A. Yeah, I mean, it sounds right. I just
18 didn't want -- I didn't recall the exact
19 number.

20 Q. Okay. Can you turn on the ELMO.

21 A. There it is.

22 Q. There we go. See it, 3.3?

23 A. Yes.

24 Q. Okay. Now -- and there was another
25 table that you had which showed Dr. Ducey's

1 compensable minutes versus Dr. Crawford's
2 compensable minutes. Do you recall that?

3 A. Yes.

4 Q. And there was a move from 4.5 percent
5 for the Canadians to 6.6. Do you recall that?

6 A. I don't recall the specific numbers,
7 but I -- that sounds like it could be right. I
8 certainly don't question you.

9 Q. So this is from your rebuttal
10 testimony.

11 A. Yes.

12 MR. COSENTINO: And, Your Honor,
13 though it says restricted at the top, I believe
14 this page is not.

15 MR. LAANE: That's correct.

16 JUDGE BARNETT: Thank you.

17 THE WITNESS: Yep, I agree. I see the
18 numbers.

19 BY MR. COSENTINO:

20 Q. Okay. So in terms of the total amount
21 of compensable programming for the Canadian
22 Claimant groups, it has gone up by about
23 50 percent, correct?

24 A. That sounds right.

25 Q. And, in fact, we have more compensable

1 minutes than sports?

2 A. I mean, just in terms of this volume
3 of minutes measure.

4 Q. Right.

5 A. They were about the same before and
6 now it's half a percentage point higher.

7 Q. So even though we have gone up by
8 50 percent, your regression compared to
9 Dr. Waldfogel's regression knocks us down to
10 zero?

11 A. I mean, the regression, as you've said
12 itself, finds a negative value per minute,
13 which I make zero. And then it leaves -- it
14 leaves a zero. As I've indicated, I think
15 there's value and I think the Bortz survey is
16 the way to get at it, but I agree that because
17 the regression itself, similar to what
18 Dr. Rosston found the first time, by the way,
19 and does not find a positive value per minute,
20 the regression itself returns a zero.

21 Sort of 4.5 versus 6.6 ends up not
22 affecting it because it has got a zero value.

23 Q. Okay. Now, you have -- you have, as
24 you just did, touted the Bortz survey numerous
25 times as being a better tool than your

1 regression. Is that fair?

2 A. I mean, I think it's a better tool for
3 purposes of assigning the ultimate valuation
4 because I think it goes right to that question
5 in a more continuous, precise way than the
6 regressions can do.

7 Q. But during the course of your
8 testimony today when you have volunteered that
9 you're not a survey expert -- is that correct?

10 A. That's fair. What I can bring to the
11 table is understanding what question the survey
12 asks and that, as an economist, it's the
13 relevant question, and then confirming that the
14 results are consistent enough with marketplace
15 data, corroborated by marketplace data that I
16 would feel comfortable using them.

17 Q. All right. When we went -- when we
18 talked about these steps, research and the
19 model, collecting the data, running the
20 regression, determining relative value, do you
21 have a sense of how much time you put in over
22 the last several years doing this?

23 A. I really don't. I mean, I started
24 working on this case -- you guys know these
25 proceedings go on. I started working on this

1 case, I think, five or six years ago. I really
2 don't know the total time.

3 Q. I mean, do you have -- you mentioned
4 staff at some point. How many people do you
5 have working for you on this project?

6 A. Oh, there's at least two that I
7 interact with regularly. They may have people,
8 you know, who help with some of the programming
9 and things, but I mean it's certainly hundreds
10 of hours of my time and theirs, but beyond
11 that, I can't give you the -- how many
12 hundreds.

13 Q. Okay. And do you know how long it
14 takes to respond to a Bortz survey?

15 A. I don't know exactly.

16 Q. Do you have any idea?

17 A. I mean, I really don't know the exact
18 number of minutes. I have seen the questions.
19 I really -- I have not gone through it. I
20 would be guessing.

21 Q. Ten minutes, 15 minutes?

22 A. I really don't know.

23 Q. Okay. Do you think it compares to the
24 amount of time you put in to doing your
25 regression analysis?

1 A. I'm sure I spent more time doing the
2 regression analysis. Regressions by their
3 nature take a longer time to do than filling
4 out a survey. I mean, I don't make much of
5 that but --

6 Q. Well, you've referred to the survey
7 responses as fine-tuned, precise, and refined.

8 A. I would --

9 Q. Working rather quick?

10 A. I would compare a survey response to
11 one of the data points in the regression, not
12 to the process of running the regression.
13 That's more like the process of Bortz writing
14 the survey and taking the survey and running
15 the analysis, right? I think a survey response
16 is a data point.

17 And it's a data point that let's a CSO
18 indicate its value in a continuous way, rather
19 than just having these kind of discrete
20 decisions about what to carry. So I think it's
21 important that the two roughly corroborate each
22 other, but given that, the Bortz survey lets
23 people give a precise valuation as opposed to
24 just a discrete carriage choice over a
25 generally small number of signals.

1 Again, I think they're both important.
2 I think, though, the key here is that they
3 are -- that there's corroboration.

4 Q. And corroboration, in your view, is
5 just that the top couple -- the top largest
6 categories match?

7 A. Yeah, as I've said, I think the keys
8 are that the top three categories -- the
9 ranking is the same. And at the very top, the
10 valuations are quite similar. I mean, again,
11 given my experience with regressions, that's a
12 really good match for marketplace data to what
13 a survey gives you.

14 Q. All right. Thank you. I have no
15 further questions.

16 JUDGE BARNETT: Thank you,
17 Mr. Cosentino.

18 Other cross-examination for this
19 witness? Mr. Olaniran.

20 CROSS-EXAMINATION

21 BY MR. OLANIRAN:

22 Q. Good afternoon, Dr. Israel. My name
23 is Greg Olaniran and I represent Program
24 Suppliers.

25 A. Good afternoon.

1 Q. According to your testimony, one of
2 the tasks that you were assigned by the Joint
3 Sports Claimants to do was to review the Bortz
4 report that was done by Mr. Trautman; is that
5 correct?

6 A. Yes, generally to review the results
7 for purposes of them seeing if they were
8 matched by market data.

9 Q. And on page 1 of your testimony, you
10 cite that the report assessed relative fair
11 market value of the different -- of the
12 different programming categories.

13 Do you see that?

14 A. Where?

15 Q. It's on page 1, paragraph 6 of your
16 testimony. The point is you referred to
17 relative fair market value.

18 MR. LAANE: Are you referring to page
19 2, Greg?

20 MR. OLANIRAN: It might be.

21 BY MR. OLANIRAN:

22 Q. Actually, yeah. I'm sorry, it's page
23 2.

24 A. Yeah, I found it.

25 Q. Thank you.

1 A. I see that, yes. And, I mean, I know
2 sometimes fair market value has a legal term.
3 I mean it in the sense of an economist as far
4 as what the value of the content would be in a
5 market -- in a free market.

6 Q. Well, I just wanted to make sure that
7 when you used the phrase "relative fair market
8 value," do you also mean the relative
9 marketplace value, which is the phrase that's
10 used fairly frequently in the course of these
11 proceedings?

12 A. Yeah, I do. As an economist, I'm not
13 distinguishing between those terms.

14 Q. Okay. And you've said that the Bortz
15 questions are the right questions. Do you
16 recall saying that?

17 A. Yes.

18 Q. And that -- that goes to the heart of
19 the matter. Do you recall that?

20 A. Yes.

21 Q. I think you said also it's continues
22 -- it's -- it asks the right questions. I
23 think I said that. I'm trying to -- you used
24 quite a few different ways to describe Bortz.
25 I just wanted to make sure I capture that.

1 So -- but, in essence, you believe
2 that the Bortz survey results are evidence of
3 relative marketplace value of the different
4 categories of programming at issue in this
5 case, correct?

6 A. Correct.

7 Q. And before preparing your testimony,
8 did you review -- I think you said earlier you
9 didn't review the Bortz report for 2010 through
10 2013; is that correct?

11 A. I have reviewed the Bortz report for
12 this.

13 Q. Before you prepared --

14 A. Oh.

15 Q. -- your testimony, did you review the
16 2010 through '13 Bortz report?

17 A. I don't recall. I certainly have
18 reviewed it in the proceeding. I think before
19 my -- and certainly before I finalized my
20 testimony, I believe that I reviewed it.

21 Q. Do you recall whether or not you
22 reviewed it before you began preparing your
23 testimony?

24 A. I don't know that I read it before I
25 began preparing my testimony. As I mentioned

1 earlier, I certainly did my regression analyses
2 and things and designed the initial -- the
3 original regression having not seen the Bortz
4 results.

5 And I certainly now have reviewed the
6 Bortz results. There has been multiple rounds
7 of reports. So exactly when I had reviewed it
8 and how that lines up with the timing of the
9 original and rebuttal report, I don't remember
10 as I sit here. I think it was late in the
11 process of preparing the direct testimony.

12 Q. Okay. Did you review the -- the Bortz
13 survey results? And I'm distinguishing between
14 report itself and the survey results. Did you
15 have access to the survey results before you
16 began preparing your testimony?

17 A. Not before I began preparing it, but
18 certainly before I finalized it.

19 Q. You saw the results before you
20 finalized your testimony; is that right?

21 A. I mean, there's tables with the
22 results in my testimony, so, yes.

23 Q. And did you also -- in preparing your
24 testimony, did you review any of the completed
25 surveys?

1 A. I certainly didn't systematically go
2 through all the completed surveys. I had seen
3 the survey form. I don't remember if I saw one
4 filled out by an actual respondent or not.

5 Q. But you did at some point before
6 completing your testimony review the survey
7 responses?

8 A. Before completing my testimony, I
9 certainly reviewed a survey and I had access to
10 the data that gave the implied valuations from
11 Bortz. I did not -- I'm not saying that I went
12 through every line of the data that they
13 collected. I reviewed the survey and I
14 reviewed the ultimate results of the survey
15 that are presented in the Bortz report.

16 Q. I'm actually asking about the
17 questionnaire -- the completed questionnaire
18 itself, whether or not you got a chance to
19 review it before completing your report.

20 A. Any completed questionnaire or --

21 Q. A completed questionnaire.

22 A. Yeah, as I said, I reviewed the
23 questionnaire forms. I don't recall whether I
24 reviewed one that was filled out or not. What
25 I'm certain I did was review the survey

1 instrument and then the summarized data.
2 Whether I reviewed a specific filled-out survey
3 form, I don't remember.

4 Q. You have no recollection whatsoever
5 about reading a completed questionnaire with
6 allocations in it?

7 A. Yeah, I just don't remember whether I
8 saw one that was filled out by an actual
9 respondent or not.

10 Q. Do you recall the questions?

11 A. I mean, generally, yes. There's four
12 main questions.

13 Q. The questions that were in the
14 questionnaire, whether it's a completed one or
15 not?

16 A. Yeah, I recall there being four main
17 questions in the questionnaire. And I've gone
18 through those.

19 Q. Okay. And so you recall -- put up
20 6020, please, Exhibit 6020.

21 Can we go to Question 2b. I'm sorry,
22 is this -- I'm sorry.

23 JUDGE BARNETT: Are these individual
24 survey responses restricted?

25 MR. OLANIRAN: It is. But my question

1 is not going to go specifically to the
2 responses, just the question itself.
3 Otherwise, we can close the door just to be
4 safe.

5 JUDGE BARNETT: Well, the survey form,
6 if it is restricted, is currently on view to
7 the world. And if you're going ask questions
8 about this that should be restricted in the
9 record, then we need to not only close the door
10 but restrict the record.

11 So are you going to ask questions that
12 are not going to impinge upon any confidential
13 information?

14 MR. OLANIRAN: That is correct, Your
15 Honor.

16 JUDGE BARNETT: All right.

17 MR. OLANIRAN: And I will focus just
18 on the question, on Question 2b, the text of
19 Question 2b, not the responses to Question 2b.

20 BY MR. OLANIRAN:

21 Q. Are you okay?

22 A. Yes.

23 Q. Have you had a chance to look at that
24 question?

25 A. Yes.

1 Q. And so in this question, the
2 respondent has been asked a question about the
3 order of importance of certain program
4 categories to the system. Do you see that?

5 A. I do.

6 Q. And let's go to Question 3. I'll give
7 you a second to take a look at that.

8 A. Yeah. I mean, I'm familiar with this
9 question.

10 Q. Okay. And do you agree that the
11 Question 3 is asking the respondent, again, to
12 do some type of ranking based on how expensive
13 the programming is, right?

14 A. How expensive they think the
15 programming -- it would be to acquire the
16 programming, yes.

17 Q. Okay. And then let's go to Question
18 4a. And this is the constant sum question,
19 right?

20 A. I think that's what it has been
21 referred to, yes.

22 Q. Okay. And then Question 4a, the
23 respondent is being asked the dollar amount the
24 respondent would have spent on each category of
25 programming in this particular year in

1 question, right?

2 A. Right. He's asked to estimate the
3 relative value and then ultimately asked what
4 -- of the fixed dollar amount, what percentage
5 would have been spent on each category, yes.

6 Q. Okay. Now, did each of these
7 questions, 2b, 3, and 4, require the respondent
8 to have a particular type of market in mind
9 when they're responding to it?

10 A. My understanding is they're asking for
11 a given cable system that this person -- the
12 first question asks them if they were
13 responsible for purchasing content for a cable
14 system. And then 2, 3, and 4, I think, ask
15 them to think about purchases for that cable
16 system.

17 Q. Well, let me be more -- in Question
18 2b, what market was the respondent supposed to
19 have in mind when responding to that question?

20 A. I'm not sure -- the only reason -- I
21 don't want to miss you. I'm not sure I know
22 what you mean by what market?

23 Q. In other words, is it a market with
24 regulation where a Section 111 compulsory
25 license exists, or is it an unregulated market?

1 A. I mean, I think 2b, they're just asked
2 to rank sort of how they value this content for
3 their cable system.

4 Q. So your testimony is that they weren't
5 supposed to have any particular market in mind;
6 is that right?

7 A. My understanding of this question is
8 they're just being asked to rank how important
9 they are to their cable system.

10 Q. I understand that. But is it your
11 testimony also that they were not supposed to
12 have any particular market in mind when they're
13 answering that question?

14 A. Yeah, I mean, if there's instructions
15 above what's on the screen now, I don't recall
16 whether there was a reference to any market.
17 My recollection is they were just asked to rank
18 -- to think about their cable system and how
19 they would rank the relative importance of the
20 content for their cable system.

21 Q. Well, let's -- and let's go to
22 Question 3. And I think I'll ask you the same
23 question about Question 3.

24 Do you think the respondent was
25 supposed to have in mind a particular type of

1 market in responding to the how expensive
2 question?

3 A. Again, my recollection, and there may
4 be other instructions I'm not recalling, would
5 be they'd think about the purchase of that
6 content as it applied to their cable system.
7 So I think they would be thinking -- I don't
8 know if they were directed a certain type of
9 market interaction, but I think they were asked
10 just, in their view, how expensive it would be
11 to acquire content of this type in their, you
12 know, sort of professional responsibility of
13 acquiring content for their cable system.

14 Q. So in formulating your approach to
15 what you were asked to do by Joint Sports
16 Claimants, it wasn't important to you, with
17 respect to Question 2 or Question 3, whether or
18 not the respondent had a particular market in
19 mind in responding to those questions?

20 A. I understood Question 2 and 3 to be of
21 a nature I see in lots of work when we -- when
22 I work with survey experts, that they ask
23 certain -- sometimes called warm-up questions,
24 to get people thinking about the type of
25 content or the type of product at issue.

1 So I understood and left to the survey
2 expert that idea of warm-up questions. And I
3 focused my attention on valuations as described
4 at Question 4.

5 Q. So the answer to my question is that
6 it was not important to you whether or not they
7 had a particular market in mind?

8 A. For Questions 2 and 3, I think that's
9 correct in the sense that they were -- I
10 understood them to be warm-up questions and I
11 defer to the survey experts on asking good
12 warm-up questions.

13 Q. Let's talk about Question 4 then. And
14 with regard to Question 4a, was the -- was the
15 respondent supposed to have a particular type
16 of market in mind, whether the market was
17 regulated or not regulated?

18 A. I mean, no. It appears to me they
19 were -- what they were supposed to have in mind
20 is the relative value to their cable system
21 therefore, if they divided up that relative
22 value, what they would spend.

23 Q. So --

24 A. My job as an economist, I think, is to
25 take those relative values and infer what they

1 mean about the marketplace, as I understand the
2 marketplace would exist based on my work in
3 this industry.

4 Q. I understand. My question is whether
5 in formulating a response to that question,
6 whether or not a respondent was supposed to
7 have a particular type of market in mind, be it
8 regulated or unregulated market.

9 A. I mean, I think they are just being
10 asked if you had to divide up based on your
11 value -- it's quite clear at the beginning of
12 the question -- if you were going to divide up
13 dollars based on your relative value, not
14 mentioning a specific marketplace, just divide
15 up what it's worth to you across these six
16 categories, how you would do it.

17 Q. So, again, it wasn't important -- in
18 formulating the analysis of marketplace
19 behavior, it wasn't important to your analysis
20 whether or not the respondents had in mind a
21 particular type of market?

22 A. I mean, I think of this as measuring
23 the value place by the buyer, right? So I --
24 in various ways in my work all the time, I
25 think about measuring the value buyers place on

1 things. And then it's my job as an economist
2 to think about what that would say about the
3 marketplace.

4 So I don't take this as the -- it's
5 not -- the answer to your question is no, I
6 don't take it as important for the buyer to do
7 the work of understanding what the marketplace
8 will look like. I think it's important for the
9 buyer to indicate his or her valuation on the
10 product.

11 Q. So what the respondents -- well,
12 strike that.

13 Do you think the respondents should
14 have had a market in mind when responding to
15 these questions or no?

16 A. I think the buyer should have the how
17 valuable they think the content is and
18 something like their willingness to pay for the
19 content in mind.

20 JUDGE STRICKLER: Did you have an
21 understanding as to whether or not --
22 objectively from looking at the questions,
23 whether the respondents should do their
24 relative valuation of these distantly
25 retransmitted categories based on already

1 having other channels and other programming in
2 their cable system or that they should consider
3 this sort of ab initio, if they were creating a
4 cable system, or value it in some other order
5 of arrival, if you will.

6 THE WITNESS: I mean, my -- I think
7 the way I would understand it would be they
8 would have in mind the other content they have
9 on their cable system, and this would be
10 additional content.

11 The reason I have that in mind --
12 sorry.

13 JUDGE STRICKLER: That's okay. Please
14 go ahead.

15 THE WITNESS: -- is just I do work a
16 fair bit with people who do these sorts of
17 purchasing decisions in other contexts. And
18 even if they're buying the cables -- you know,
19 they negotiate sort of quarterly with some
20 cable network system, and so they're going to
21 go negotiate with Disney, they have in mind the
22 content we have, and Disney is now going to be
23 the incremental content because that's who
24 we're negotiating with.

25 So in my experience, the way they

1 think about these is one at a time, this is now
2 the one on the margin, as we'd say as an
3 economist, and I'm thinking about its value,
4 given the stuff that I've already contracted
5 for.

6 So that was my understanding, and I
7 think that's how one of these purchasers would
8 think about it.

9 JUDGE STRICKLER: So you wouldn't do
10 it in sort of a heuristic Shapley value type of
11 situation; you're saying they already come to
12 this or at least it's your understanding that
13 the question presupposes an existing complement
14 of programs on the Disney Channel, on ESPN, on
15 all the other -- the other program channels
16 that they have and now they're going to value
17 these distantly retransmitted programs in their
18 categories with the assumption that they
19 already have the prior programming?

20 THE WITNESS: That's right. That's
21 how I think about it because that's how I see
22 these guys in practice when they go to any of
23 these negotiations. They're sort of one of the
24 time. They've nailed down the last one. And
25 now it's I've got to come and negotiate with

1 Disney, given that I've got the last one. And
2 they run valuations based on that.

3 That's just -- I think that certainly
4 is my understanding. And I think that's how
5 they think about it.

6 JUDGE STRICKLER: That certainly
7 doesn't sound like an unreasonable way to
8 approach it. Do you really see anything in the
9 -- in the structure of the question that would
10 lead a respondent to presuppose that they
11 already had the prior programming? Or is that
12 just your -- just your informed assumption
13 based on your own industry expertise?

14 THE WITNESS: I mean, certainly, it's
15 more the latter in my case. I have not -- I
16 mean, I -- like we could -- obviously, the
17 document speaks for itself, and I don't recall
18 if there was a specific statement that said
19 assume that you have it. But my opinion on
20 that is really based on just my experience and
21 how these guys think about acquiring content.

22 JUDGE STRICKLER: You said earlier
23 that you -- one of the reasons why you were --
24 what you were doing was trying to confirm the
25 accuracy of the Bortz survey is because you

1 thought the Bortz survey asked the right
2 questions and narrowing in on the particular
3 question, which is the constant sum question.

4 THE WITNESS: Yeah.

5 JUDGE STRICKLER: Do you think it lays
6 out that foundation as to whether or not the
7 existing program line-ups were already there,
8 the Disney, as you say, the ESPN and the
9 others, or do you think this question is
10 ambiguous in that regard such that the
11 respondent doesn't have enough information to
12 determine what the contours of the existing
13 channel selection are before they answer the
14 question?

15 THE WITNESS: No, I understand your
16 question.

17 So, I mean, I guess, when I read this
18 question in the context of the way I see
19 purchasing done in this industry and it says
20 assume you spent a fixed dollar amount and what
21 percentage would you spend, my understanding is
22 just I think the person who was in charge of
23 doing the purchasing would do these sorts of
24 negotiations all the time and they do -- I
25 think they would generally see it as

1 conditional on what they have. But I don't
2 know, as I sit here, whether there's a specific
3 line in the question that says that or not. I
4 don't remember.

5 Throughout -- I will say that
6 throughout my entire analysis, I have had in
7 mind the way -- because, obviously, what we
8 need to do is think about what a market would
9 look like, right? And so the way I've thought
10 about what a market would look like is there's
11 an existing market for cable networks that
12 works a certain way in which they negotiate,
13 they figure -- you know, they sort of have a
14 willingness to pay that gets divided up between
15 them and the provider.

16 And there I know that what they do is
17 negotiate for each of them conditional on
18 having the other stuff in mind. So what I've
19 done for myself is port this into that world
20 and here leave it to the survey expert what
21 they put in the question, but my understanding
22 that that would match what they do is just that
23 that's the way -- for me, that's the way I see
24 these guys do purchasing.

25 JUDGE STRICKLER: Thank you.

1 BY MR. OLANIRAN:

2 Q. Do you -- I want to ask you, you
3 talked a second ago and certainly quite a bit
4 of your analysis is based on cable networks.

5 I want to talk about the broadcast
6 signals.

7 A. Okay.

8 Q. Okay? So in your analysis, did you
9 focus at all on what broadcast signals would
10 look like absent the compulsory license?

11 A. I mean, not the explicit legal regime.
12 As I said, I think broadcast networks are now
13 -- also negotiated through a very similar
14 procedure that determines what gets paid for
15 things like retrans fees, and so I, again,
16 ported this into that world in which you're
17 negotiating over the price of a network.

18 Q. Well, let's assume then that the
19 Section 111 license did not exist and we had a
20 market in which -- what market -- what would
21 the market look like in your vision of the
22 market structure where Section 111 didn't
23 exist? Who would the buyer of programs be?

24 A. You mean --

25 Q. Under your approach to this

1 marketplace behavior?

2 A. Sure. And I'm sure there has been
3 lots of views and testimony, but my mental
4 model is the model for -- that currently exists
5 for the licenses to retransmit broadcast
6 networks for cable networks.

7 So in the case of broadcast networks,
8 it's through retrans fees, which today are
9 often bundled with cable networks or for cable
10 networks. In either case, there is a
11 negotiation between a content provider and a
12 CSO or a broader cable system for a price per
13 subscriber per month for the network of content
14 as a network. So that's the way that I've --
15 to me, it's natural to think about these
16 distant signals as one more network that would
17 be part of that cable system/content provider
18 negotiation.

19 Q. So your vision of the market, though,
20 that would be the content provider, the
21 copyright owner in this case, would be
22 licensing the program to the broadcast signal;
23 is that right?

24 A. Yes. So in my vision of the way
25 things work today, the network, be it a

1 broadcast network or cable network, puts
2 together a bundle of programming for which they
3 have to acquire copyrights.

4 Q. Are you equating broadcast networks
5 and cable networks in this hypothetical market?

6 A. I don't know what you mean by
7 "equating."

8 Q. Are you treating them the same?

9 A. Only in the sense that I -- what I see
10 in the marketplace is cable systems negotiating
11 with networks, be that broadcast networks or
12 cable networks. They're clearly not exactly
13 the same content, but in both cases, I see
14 cable systems negotiating with networks as
15 networks.

16 Q. Are cable systems -- are cable
17 networks FCC-regulated as are broadcast
18 signals, broadcast stations?

19 A. Now you're going to get beyond all the
20 regulations I know. There certainly is FCC
21 oversight in both cases. In -- in the --
22 specific FCC rules are different, I think, for
23 broadcast networks and cable networks, but all
24 I'm saying is that in both cases I see cable
25 systems negotiating with networks as networks,

1 not as separate copyright owners.

2 Q. And, again, in this marketplace of
3 your framework, who is the buyer in that
4 marketplace and what are they buying?

5 A. CSO is the buyer and they're buying --
6 and, again, now we're going to get into whether
7 I have the legal words right, but in my head,
8 they're buying the licenses or whatever it
9 takes to be able to show that content on their
10 cable system.

11 Q. So the CSOs are buying the content
12 directly from the copyright owner or are they
13 buying from -- are they buying from -- who are
14 they buying from?

15 A. From the network.

16 Q. What network?

17 A. They're buying from -- if it's a cable
18 network, it is a cable network. If it's a
19 broadcast network, they may be buying from a
20 local affiliate or a set of local affiliates or
21 the network itself, in the case of the ONOs,
22 but they're buying from a network that may be a
23 national network or may be a set of localized
24 networks, but in each case, they're buying from
25 a network provider who provides a set of

1 contents.

2 Q. Are they buying the entire signals or
3 are they buying individual programs?

4 A. Entire signals in general.

5 Q. Okay. So -- but what you're saying is
6 a cable system is going to be acquiring an
7 entire signal from a broadcaster or some other
8 type of cable network; is that a fair way to
9 describe it?

10 A. I mean, that's how I see the
11 marketplace working today for content other
12 than these distant signals.

13 Q. Okay. Now, with respect to the
14 content that the broadcaster is -- is carrying,
15 where is the broadcaster getting that content
16 from?

17 A. Now we're beyond things that I've
18 analyzed closely. My understanding would be
19 that they're putting together, you know,
20 programs and other things for which they are
21 acquiring copyrights. But, frankly, the
22 process of how the network puts together the
23 content and all those negotiations is not
24 something that I have studied or worked on as
25 closely.

1 Q. You haven't focused on how
2 broadcasters acquire content that ultimately
3 winds up in a bundle to the cable system; is
4 that correct?

5 A. Not in great detail. I understand
6 that they negotiate with, you know, content
7 providers who -- for whom they have to acquire
8 rights and there's detailed, long contracts
9 about what rights they do and don't have to
10 redistribute that content. But beyond -- I
11 don't know if there's more to your question
12 than that.

13 Q. But in your view, the market -- the
14 way the market is currently structured would
15 remain the same, except that the way that the
16 compensation would be structured would be
17 different; is that right?

18 A. I'm not sure what you mean by "remain
19 the same."

20 Q. In other words, a broadcaster would
21 acquire content from somewhere to fill up their
22 broadcast, their daily -- their broadcast day,
23 if you will, and then the cable system would
24 make a deal with a broadcaster to retransmit
25 that particular station?

1 A. I mean, that certainly is the mental
2 model I've had in mind. I mean, my analysis is
3 ultimately an analysis of relative value for
4 content.

5 So, I mean, we could go to another
6 type of hypothetical market you have in mind,
7 then I still think the relative -- as long as
8 there's negotiations for content and the CSO is
9 buyer of some content, I don't think it would
10 change anything in my analysis.

11 We could talk about specific cases if
12 you want, but certainly the mental model that
13 I've had in mind has been porting it into the
14 existing kind of broadcast network or cable
15 network process in which the CSO is a buyer,
16 they buy the rights to a network, and the
17 network has separately put together the rights
18 to sell that content.

19 Q. But you haven't given any thought to
20 that primary market where the individual or
21 multiple programs are acquired by the broadcast
22 network in this case?

23 A. But it's fair to say that my analysis
24 has treated the CSOs as the ones making choices
25 and the CSOs as the buyers. And I have not

1 done an analysis, a separate analysis of what
2 you're calling the primary market.

3 Again, as I said a minute ago, I think
4 ultimately you're going to -- you know, the
5 relative -- I don't see that the relative
6 valuations of the content I have here wouldn't
7 ultimately be the relevant values, but I have
8 not done a separate analysis besides what's
9 presented in my reports.

10 And my reports focus on the CSO as the
11 buyer of a network.

12 JUDGE STRICKLER: And because your
13 reports and your regression deals with the
14 market as it exists, you're not showing us what
15 might happen through your regression in a
16 hypothetical market; you're showing us what
17 actually -- what choices are actually made in
18 terms of implicit or shadow prices based on
19 what cable system operators have, in fact, done
20 in terms of the signals that they decide to
21 distantly retransmit?

22 THE WITNESS: I think that's fair. I
23 mean, I'm using -- the only thing I would add
24 to it -- and apologies if this was obvious in
25 the question -- but I'm using the existing

1 purchase choices as a way to infer value.

2 But when I say -- I mean, obviously as
3 an economist, I have to think about, you know,
4 how does that value map into some hypothetical
5 free market? And as I said earlier, what I
6 have in mind is -- for that hypothetical free
7 market is a negotiation between a CSO and a
8 network, although I think it could be a
9 negotiation between a CSO and a set of content
10 providers.

11 What matters is, in an economic model
12 of that negotiation, they're dividing up the
13 buyer's willingness to pay and so those
14 valuations -- I think of the relative
15 valuations as being the key determinant of what
16 the relative negotiated prices would be in that
17 free market.

18 JUDGE STRICKLER: So you're saying if
19 the signal was, based on your analysis that --
20 or you could apply your analysis even to a
21 disaggregated situation where rather than
22 importing -- retransmitting this signal and
23 purchasing the signal in its entirety, a cable
24 system that decided to negotiate separately
25 with each -- programs within each category

1 would still -- in that hypothetical framework,
2 still come up with the same relative
3 valuations; is that you're saying?

4 THE WITNESS: I think so because
5 the -- I think those negotiations would have
6 more transactions costs and be more difficult
7 negotiations, but, you know, sort of basic
8 models of bargaining and economics that you're
9 splitting up the buyer's willingness to pay.

10 So as long as you've measured the
11 buyer's willingness to pay across categories of
12 content, I think whether those are prebundled
13 for you or separated out, I think the key
14 driver would still be those relative
15 valuations.

16 MR. STRICKLER: Now, if you were going
17 to try to map it onto this kind of
18 disaggregated negotiation, wouldn't viewing of
19 the individual programs within the categories
20 then become of greater importance? In other
21 words, if I'm a cable system operator and I
22 think I want a syndicated show, I'm going to
23 negotiate one price for a syndicated show that
24 I think people are more apt to watch because
25 that might be a proxy for subscribership,

1 whereas a program that people are not watching
2 in their local market, maybe that's not going
3 to happen -- even though I like that category,
4 it may be a really lousy show within that
5 category, so I'm not going to pay for it.

6 So doesn't -- if you disaggregated in
7 that manner, doesn't viewing then become of
8 relatively more importance than if you keep it
9 aggregated at the signal level?

10 THE WITNESS: I'm going to think for
11 one second just to --

12 JUDGE STRICKLER: Absolutely.

13 THE WITNESS: I think -- I mean, in
14 general, I think my view on viewing is that
15 viewing is some indicator of popularity of some
16 programs, but it still is not the value to a
17 cable system. Right?

18 A cable system still might want a
19 program that has relatively little viewing
20 because it diversifies its offering, and so
21 even if you disaggregate, if you have two
22 things that -- two shows that hit exactly the
23 same spot, but one has more viewing than the
24 other, I'm not saying that's irrelevant, but I
25 still think the valuations are about a lot more

1 than viewing; they're about diversification.

2 And I -- I know -- you look like you
3 have another question, so --

4 JUDGE STRICKLER: Go ahead, please.

5 THE WITNESS: The -- and I certainly
6 think that when you rolled it up, I almost
7 think in that world you could think the CSO
8 sort of rolling up to like categories of
9 content. And I still think when you still roll
10 it up, the same basic forces would apply as far
11 as what's the overall value of that category of
12 content in terms of how it diversifies my
13 offering.

14 JUDGE STRICKLER: But when -- assuming
15 you were disaggregating and you were
16 negotiating with individual content providers,
17 if you had two different shows, there was a
18 niche sewing program, which didn't have a whole
19 lot of viewership but you thought you could get
20 some marginal subscription revenue from that,
21 all other things being equal, wouldn't you want
22 the sewing program that has three times the
23 viewership than another sewing program?

24 THE WITNESS: If literally everything
25 else is held equal, they're the same sewing

1 program, just one has a better host so it has
2 more viewing, then I think I agree that viewing
3 would be a factor there.

4 But I think that when you start
5 thinking about sewing programs that are
6 somewhat different and then you roll them up to
7 say all syndicated programs that include sewing
8 and cooking and every other type of
9 programming, then it would be about -- much
10 more about the diversified bundle unless -- it
11 wouldn't be about the sum of the viewing.

12 JUDGE STRICKLER: Thank you.

13 BY MR. OLANIRAN:

14 Q. And just to be clear, your idea of the
15 hypothetical market is that the buyer would be
16 the CSO and the CSO could either acquire an
17 entire bundle in the form of a station or
18 actually purchase individual content from
19 copyright owners; is that correct?

20 A. I mean, my view of the market that
21 I've had in mind is I think -- through the
22 analysis, has been an analogue to what exists.
23 So I think the most natural view of the market
24 is CSOs buying networks of content.

25 The only addition I was making in

1 response to the question is that I think as
2 long as the -- however the CSO aggregates up,
3 as long as the CSO is aggregating up these
4 categories of content that we're talking about,
5 the same relative value calculations would
6 drive the relative payments.

7 Q. And under what circumstance would the
8 CSO be buying individual content as opposed to
9 acquiring entire signals?

10 A. I haven't thought about a specific
11 circumstance. I think the most natural way to
12 model the market, because we have an existing
13 market -- we have an existing free market for
14 the vast majority of what CSOs purchase.

15 So I think the natural way to model
16 that market is the CSO buying the network of
17 content, the signal as a whole.

18 Q. And it would be very unusual, would it
19 not, for a CSO to actually acquire individual
20 content unless it was actually building its own
21 signal or network, if you will?

22 A. I don't know -- I mean, I don't want
23 to overstate it. So I don't know if there are
24 cases where that happens for certain programs.
25 I certainly agree, as I just said, that the

1 case that I know best that seems to be the
2 common case is that a CSO buys an entire signal
3 or an entire network.

4 Q. And you used the phrase "aggregating
5 up the content." Could you explain what you
6 mean by aggregating up the content?

7 A. Let me just -- at various points in
8 the marketplace, people buy rights to content
9 and put them together into shows and then
10 networks. I'm just saying that, again, I think
11 the natural way to model it is the way that it
12 generally exists, which is that CSOs buy
13 networks or buy signals.

14 But if they aggregate -- if they
15 purchase it in some more disaggregated way,
16 buying shows and roll them up, I don't think
17 that would change any of my answers.

18 Q. I also want to follow up on another
19 discussion you had earlier today regarding
20 whether you saw the Bortz 2013 report before
21 preparing your report. I think you said that
22 you did not.

23 And so my -- you did say, however,
24 that before you prepared your report, you saw
25 Dr. Waldfogel's testimony. Is that correct?

1 MR. LAANE: I'm going to object that
2 it misstates his testimony.

3 THE WITNESS: I'm certain I saw the
4 Bortz 2010 to 2013 report before I prepared my
5 report. Again, as I mentioned a minute ago,
6 there are numbers from that report in my
7 report.

8 I think what I said in response to
9 some questioning from the Judges was that I
10 started from the Waldfogel process and I put
11 together my regression methodology before I saw
12 the Bortz survey results. I was working on it
13 as far back as five or six years ago.

14 So, yeah.

15 BY MR. OLANIRAN:

16 Q. And I may have misstated, but you did
17 not see the Bortz 2010 through '13 report
18 before you started preparing your report?

19 A. Did not see it before I started
20 because I would take "started" as meaning
21 beginning my regression approach and planning
22 my regression. I certainly -- I mean that
23 process started years before there was a Bortz
24 report.

25 JUDGE STRICKLER: But you saw the

1 Bortz 2010-2013 results before you completed
2 your methodology?

3 THE WITNESS: Correct, before I
4 completed my report. I had run regressions
5 before I ever -- the basic regressions you see
6 here before I ever saw the Bortz results.

7 JUDGE STRICKLER: Did you change your
8 report after you saw the Bortz results?

9 THE WITNESS: The main regression, I
10 believe, I don't want to misstate, the
11 sensitivities had been in place for quite
12 sometime, before --

13 JUDGE STRICKLER: So your answer is
14 no, you didn't make any changes to your own
15 report or analysis after you saw the results of
16 the Bortz 2010-2013 study?

17 THE WITNESS: Certainly not to the
18 regression analysis. There were changes to the
19 report, right.

20 JUDGE STRICKLER: Any changes of
21 substance?

22 THE WITNESS: No. When I say changes
23 to the report, I just mean I added the tables
24 and the analysis doing the comparison, but no
25 changes to my methodology.

1 JUDGE STRICKLER: And no changes of
2 substance?

3 THE WITNESS: Correct.

4 JUDGE STRICKLER: Thank you.

5 BY MR. OLANIRAN:

6 Q. And did you -- in your research
7 process before you began preparing your report,
8 did you look at the '04-'05 Bortz report?

9 A. I -- I certainly saw the results from
10 that report. I don't recall as I sit here
11 whether I read that report from cover to cover.

12 Q. Did you, in reading Dr. Waldfogel's
13 report -- it certainly made a lot of references
14 to the '04-'05 Bortz report, did it not?

15 A. Yes.

16 Q. Okay. With regard to your regression
17 analysis, and I think -- now, are you offering
18 the regression analysis as independent evidence
19 of marketplace value or only as corroborative
20 of the Bortz survey?

21 A. I'm offering my regression as
22 corroborative of the Bortz survey.

23 Q. Only as corroborative?

24 A. That's my view, correct.

25 JUDGE STRICKLER: Does that mean if

1 there was no Bortz survey, you wouldn't hold
2 out your regression results as indicative of
3 appropriate value?

4 A. No, if there was no Bortz survey, then
5 I think you would look to the regressions that
6 exist as the best measures that we have. My
7 statement is only that, given there is a Bortz
8 survey and that it asked the direct question, I
9 think in that context, the right way to treat
10 the regression is as corroborative.

11 JUDGE STRICKLER: Again, a
12 hypothetical. There is no Bortz survey. You
13 did your report and didn't rely on the Bortz
14 report and you didn't see -- you didn't change
15 your methodology or your results in any kind of
16 substantive manner, as you just testified,
17 after you saw it.

18 So if the Bortz report never existed,
19 would you be holding out your regression as
20 good evidence of relative value for this
21 proceeding?

22 THE WITNESS: I mean, I think it's
23 fair. My regression, I also think Dr. Crawford
24 did a good regression. So I think my view
25 would be in that hypothetical world, I would

1 think those are the two best pieces of evidence
2 that have been presented.

3 JUDGE STRICKLER: Okay.

4 BY MR. OLANIRAN:

5 Q. So then you're saying that it's not
6 independent of -- it's not simply
7 corroborative; it's an independent evidence of
8 marketplace value?

9 A. I was asked a hypothetical, if there
10 was no Bortz report. And I think that my
11 regression would provide and Dr. Crawford's
12 would provide the best evidence in the record.

13 Given that there is a Bortz report, my
14 view is that my regression should be used as
15 corroborative of the Bortz report.

16 Q. I think you're saying that it's both
17 independent and dependent and corroborative?

18 A. I'm saying my answer depends on which
19 world we're in. As I've said today, I think,
20 given the question that Bortz asks, given the
21 detail with which it can measure the
22 valuations, I consider it to be the best
23 evidence available.

24 So if better evidence exists, then I
25 think it's natural to say, well, that's a

1 survey. Was the regression generally
2 corroborated?

3 Of course, if that survey didn't
4 exist, I would have to think about what's the
5 best thing that's left.

6 Q. Well, let me ask you differently.
7 What if the survey existed and the Judges
8 didn't find the Bortz -- the Bortz survey
9 acceptable? Would you still -- would your
10 regression analysis still be considered
11 evidence of marketplace value?

12 A. I mean, I think that's analogous --
13 obviously, the Judges make the decision. So if
14 they took the Bortz survey out and decided, for
15 whatever reason, they weren't going to rely on
16 it, I think -- my testimony is I think the
17 other best pieces of evidence in the record are
18 my regression and Dr. Crawford's regression.
19 So at that point, I think those would be the
20 best remaining things to rely on.

21 JUDGE STRICKLER: That's because you
22 don't see any other survey evidence in the
23 record after your own analysis of that survey
24 evidence that that's more persuasive, more
25 probative than the regressions?

1 THE WITNESS: Right. I do think it's
2 important that the survey analysis be
3 corroborated by marketplace evidence. Many
4 people have raised many questions about the
5 various surveys. So if I've seen a survey like
6 the Horowitz survey that I don't think is
7 corroborated by the marketplace evidence, then
8 I think I wouldn't want to rely on that.

9 BY MR. OLANIRAN:

10 Q. And what are you referring to as the
11 marketplace evidence exactly? Is it your
12 regression or -- and what else?

13 A. I think it's my regression -- I mean,
14 it's what's in my report. So I think
15 ultimately the marketplace evidence is my
16 regression, my cable content analysis for the
17 two propositions that I put that forward for,
18 that an hour is not an hour, it depends on
19 value, and sports hours tend to have more
20 value. So I think that's marketplace evidence
21 of those two phenomena.

22 And I think as I've referred many
23 times in my reports to the Crawford regression,
24 that's another piece of marketplace data.
25 There may be more. I might not be remembering

1 everything in my reports. The reports speak
2 for themselves. But that's what I'm thinking
3 of now.

4 Q. So your key pieces of marketplace data
5 is your regression, your cable content analysis
6 and Dr. Crawford's analysis?

7 A. Those are the ones -- again, my two --
8 my direct testimony and rebuttal testimony
9 speak for themselves. Those are the ones I'm
10 recalling now. And, certainly, I think all
11 three of those are important marketplace
12 evidence.

13 Q. And were you aware that Dr. Crawford
14 was going to file testimony in this case at any
15 point during the preparation of your report?

16 A. Certainly nothing in my first report
17 changed. I think I found out that there was --
18 Crawford was the expert. I know Greg. We went
19 to graduate school together. But I think I
20 found that out like a day before my report was
21 filed or the day it was filed.

22 Q. You're talking about your rebuttal
23 testimony or your direct testimony?

24 A. Direct testimony. It might have been
25 when they got exchanged. I don't remember. It

1 was definitely after my report was finalized
2 and I found -- or at the very end I found out
3 -- I knew there would be testimony from
4 commercial and from the other Claimants, and I
5 found out very late in the process that it was
6 the Crawford testimony.

7 Q. Just quickly about your regression.
8 The coefficients that you calculate for each
9 program category represent the value of each
10 additional minute; is that a fair way to
11 describe it?

12 A. I think we refined it some to be
13 better. I think the right way to say it is
14 that they are the average valuations of
15 incremental sets of minutes that CSOs purchase,
16 holding everything else constant. So,
17 ultimately, I think they're best used as
18 measures of the relative valuation of -- the
19 relative average valuation of these minutes.

20 Q. And in terms of what this coefficient
21 means, is it fair to say that the variations in
22 the level of royalty fees are explained by the
23 variations in the additional minutes of each
24 type of programming? Is that a fair way to
25 characterize it?

1 A. No, I think a fair way to characterize
2 the regression generally is that it explains
3 variation across cable systems and over time in
4 royalty fees as determined by variation in the
5 number of minutes, as well as variation in the
6 other control variables that primarily measure
7 the size of the system.

8 Q. Setting your regression analysis
9 aside, do you have a basic understanding of how
10 royalty payments are determined under Section
11 111; is that correct?

12 A. Say that again -- under Section 111?

13 Q. I'm sorry. Under the compulsory
14 licensing scheme?

15 A. Yes.

16 Q. And in your hypothetical market, would
17 a compulsory licensing scheme still exist?

18 A. No.

19 Q. Okay. And how, just in general terms,
20 what your understanding is of how royalty
21 payments are calculated?

22 A. Under the compulsory licensing scheme?

23 Q. Yes.

24 A. I mean -- and, again, my report talks
25 about Form 3 CSOs. My general understanding is

1 there's -- the royalty payments are a
2 multiplicative percentage of the gross receipts
3 of the CSO. I think there's a minimum of, I
4 think, 1.064 times the gross receipts, a
5 percent of the gross receipts, and then it
6 scales up, but at a decreasing rate as you add
7 more signals.

8 Q. So, basically, the royalty fees are
9 based on such totally prescribed formula for --
10 that the cable systems follow, correct?

11 A. That's correct.

12 Q. And it's the type of stations,
13 correct? You consider the type of stations
14 that the system is carrying, right?

15 A. You mean in terms of what its DSE
16 equivalent is?

17 Q. Right.

18 A. Yes.

19 Q. And then you look at the gross
20 receipts, correct?

21 A. Yes.

22 Q. And several other factors that are
23 prescribed within the statute and the
24 regulations, correct?

25 A. I mean, I think it's basically gross

1 receipts, what the DSE equivalent is, and then
2 this measure of how many DSE equivalent signals
3 you're carrying. I think those are the basic
4 factors. And there's also certain rules about
5 these 3.75 percent systems, but --

6 Q. Okay. And so to the extent there are
7 variations in the royalty payments made by
8 cable systems, that will be based on changes
9 within carriage, perhaps; let's say they're
10 carrying five signals versus no signals at all,
11 right?

12 A. Right. As I've said, I think the
13 variation that I'm studying that drives my
14 results is the decision about what signals to
15 carry.

16 Q. And, in fact, the factors that you
17 need to calculate royalty obligations under the
18 compulsory licensing scheme are completely
19 agnostic to the mix of programming you're
20 carrying; isn't that right?

21 A. I mean, the formula doesn't
22 distinguish -- well, other than the -- the DSE
23 equivalents, that may be different for, you
24 know, network versus public versus -- but other
25 than that, the formula doesn't distinguish --

1 the formula is based on how many signals you
2 choose. Of course, you as a CSO have to decide
3 what type of signals to carry, given the
4 implied price.

5 Q. In fact, if you carried no distant
6 signal or you're carrying one independent
7 signal with 100 minutes of sports, you're still
8 going to pay the same thing, correct?

9 A. I think if you're up to the minimum
10 payment, you pay the minimum payment.

11 Q. That would be a yes?

12 A. I was just trying to clarify, but,
13 yes, anything up to and including the minimum
14 payment pays the minimum payment.

15 Q. Now, you said this a few times and I
16 want to make sure I get this right. You said
17 earlier that what your cable content analysis
18 shows is that an hour is not just an hour and
19 it depends on what type of programming you're
20 carrying. Do you recall that?

21 A. Yes.

22 Q. And what do you mean by an hour is not
23 an hour?

24 A. I mean you can't just add up the
25 number of hours carried or the number of hours

1 viewed and say that that determines value
2 because the value per hour differs for
3 different types of content.

4 Q. And why do you say that? Why does it
5 differ?

6 A. That's the various evidence throughout
7 my report, shows that people in various
8 contexts pay more per hour for different types
9 of content.

10 Q. I understand that part of it. Why do
11 they pay more for different types of content?

12 A. There could be multiple reasons. The
13 different content serves different needs for
14 them for their CSO.

15 Q. Who is "them"? Are you talking about
16 subscribers or CSO?

17 A. CSO. The CSOs are the buyers, if
18 that's ever not clear, and different content
19 serves different needs in putting together a
20 bundle of programming for subscribers.

21 Q. Does subscriber interest play any part
22 in the reasons for why different types of
23 programming would be valued differently?

24 A. I mean, certainly the CSOs are trying
25 to attract, retain, maximize the willingness to

1 pay of subscribers. So, certainly, they are
2 aggregating the interest of subscribers, is a
3 big part of what they do. But ultimately that
4 means they determine the value that best serves
5 the diversified set of subscribers they're
6 trying to serve.

7 Q. And how are they -- what part of --
8 how are they measuring what the subscribers'
9 interests are in trying to put a diversified
10 programming together?

11 A. I mean -- so now we're again going
12 into things that I know from lots of work I do
13 in this industry. I mean, the calculations I
14 see them do are some combination of how does
15 this content help me attract subscribers,
16 retain subscribers, or maximize what I can
17 charge subscribers.

18 So I've seen them do very economic
19 calculations that basically just say how much
20 more profitable will we be as a CSO if we carry
21 this content.

22 Q. And how are they determining whether
23 or not a subscriber would be attracted to the
24 programming they put together?

25 A. I mean, they do lots of things. They

1 do -- they look at when they've had blackouts
2 and haven't had certain content, how many
3 people leave. They look at what -- you know,
4 what sort of prices they've been able to charge
5 in the marketplace when they have certain
6 content or not have certain content.

7 The calculations that I've seen them
8 do are very much driven by how much more money
9 can they make if they have this content than
10 not.

11 Q. Now, they don't care -- do they care
12 if subscribers are watching the program or not?

13 A. I mean, care? As we said a minute
14 ago, they -- certainly the value that
15 subscribers puts on different types of content
16 matter, but it's nothing close to a one-for-one
17 correlation with viewing. It's based on
18 attracting, retaining, and being able to charge
19 CSO subscribers, that viewing is one of, in my
20 experience, dozens of factors that they
21 consider.

22 Q. And what else beside viewing would
23 measure the attractiveness of a subscriber to
24 particular types of programming?

25 A. I mean, one example, there's many,

1 but, I mean, again, this is -- these guys do
2 this for a living. But one example would be
3 when I have content, how many more subscribers
4 stay with my system and don't leave.

5 And another example would be when I
6 have certain content, can I put it on a tier of
7 programming on my CSO that becomes more
8 attractive so I can charge more for it? Those
9 things are -- you know, because they're trying
10 to put together diversified bundles and they're
11 trying to serve diversified subscribers, in my
12 experience, those things are quite distinct
13 from the number of people who watch the
14 program.

15 Q. Now, do you know whether CSOs research
16 whether or not subscribers that have left were
17 watching particular programming?

18 A. Again, in my experience, they study
19 primarily who leaves and who comes. Whether
20 one variable they might look at in a model of
21 that along with many others might be who was
22 watching, it's possible. I really don't know.

23 JUDGE STRICKLER: When these bundles
24 are created, given your experience in working
25 with people in the industry, are the bundles

1 also created as a form of -- or do they explore
2 them as a form of price discrimination so that
3 they can increase the willingness to pay of
4 individuals who are already subscribing because
5 the bundle creates an ability to reveal a
6 higher willingness to pay? If that makes
7 sense.

8 THE WITNESS: Generally yes, or just
9 to -- I mean, I think the answer to that is
10 yes. They certainly put together, you know,
11 tiers of programming. So if they have more
12 programming, they might be able to put together
13 some sports tiers or children's -- I mean, they
14 put together all sorts of different packages so
15 that they can sell those.

16 And I think you're right to say that
17 one function that plays is that they can better
18 price discriminate.

19 JUDGE STRICKLER: So you could add
20 program B and then sort of an agent allows you
21 to charge more for program A because A is now
22 bundled with B, so the overall bundle is worth
23 more than the two individuals programs?

24 THE WITNESS: I think that's possible.
25 But I think it's also possible that you might

1 add program B and C, such that you can create
2 two tiers, one of which has A and one of which
3 has B and C, and better sort out your customers
4 in terms of what their preferences are.

5 JUDGE STRICKLER: Thank you.

6 BY MR. OLANIRAN:

7 Q. With regards to the programming
8 minutes, you basically treat all the minutes
9 the same; is that right? You don't make any
10 distinction about the type of programming with
11 respect to the minutes; is that right?

12 A. I'm not sure I understand. I
13 certainly use minutes as the unit of
14 observation, but I measure them by type of
15 content, so I have minutes in each type of
16 content and I measure the value of those
17 minutes separately for each type of content.

18 Q. What do you mean by you value for each
19 type of content? Are you talking about the
20 coefficient?

21 A. Yeah.

22 Q. Okay. But that's the only way in
23 which you distinguish the minutes, correct?

24 A. I mean, I distinguish them, first of
25 all, by putting them in these buckets by what

1 type of content it is.

2 Q. Okay.

3 A. So I don't treat the minutes the same.
4 I treat them as Program Supplier minutes or
5 Sports minutes or Commercial minutes. And
6 then, yes, within each of those buckets, I let
7 that number of minutes have a different
8 coefficient to reflect its different value.

9 Q. You don't look, say, at time of day
10 that the program was on that's -- to determine
11 -- to put some form of valuation, to value that
12 particular time of day differently from the
13 remainder of the other minutes, right?

14 A. Yeah, that's correct. I treat the
15 minutes -- I don't distinguish by time of day.

16 Q. And you don't distinguish by
17 demographics either?

18 A. I mean, I don't measure the valuations
19 differently by demographic mix. I mean, that,
20 sort of what demographics the minutes attract
21 is part of the valuation that the CSO puts on
22 the minutes.

23 So different demographic mixes
24 associated with different kinds of content are
25 one driver of the difference in the

1 coefficient, but beyond that, I don't do more.

2 Q. So within the syndicated programs
3 bundle, for example, my American Idol at 8:00
4 p.m. on a Wednesday night is valued the same as
5 Watching Paint Dry at 3:00 a.m. in the morning;
6 is that a fair way to describe that?

7 A. I mean, I think I would say what I
8 report is an average across those two different
9 types.

10 Q. Anyhow, you conclude that -- you know,
11 your model confirms that sports programming is
12 worth substantially more than other
13 programming, all the other, I guess, five or
14 six categories of programming; is that right?

15 A. Yes.

16 Q. Okay. And that assertion is really
17 based on the value per minute that you
18 calculate for the -- for the sports
19 programming; is that right?

20 A. I would say it's a conclusion based on
21 all of the various studies put forward in my
22 reports. I mean, the regression determines a
23 value per minute for categories. The cable
24 content analysis looks at what people pay for
25 it. But -- so I would say it's a conclusion

1 based on the empirical evidence we've been
2 talking about.

3 Q. Do you agree that WGNA was the most
4 highly retransmitted broadcast signal during
5 the 2010 through '13 period?

6 A. I think that's right.

7 Q. And it also has the largest subscriber
8 reach of any distant broadcast signal, correct?

9 A. I think that's right.

10 Q. And it's also attributed with most of
11 the -- most of the compulsory license fees that
12 are deposited for each year are attributable to
13 WGNA's; is that correct?

14 A. I don't know the exact percentages,
15 but that sounds right.

16 Q. Okay. And do you know the source of
17 the calculations for the fees generated?

18 A. No, I don't think I know explicitly.
19 I think I've seen some discussion of a fees gen
20 calculation, but that's not something that I've
21 studied.

22 Q. So you don't know who calculates it?

23 A. No, I don't.

24 Q. Okay. Do you know whether it's --
25 it's -- it's a calculation that's prescribed by

1 statute?

2 A. I just -- if we're talking about the
3 specific sort of fees gen variable I referred
4 to, I really don't know much -- anything about
5 it. It hasn't been something I've used in my
6 analysis.

7 Q. Okay. Does WGNA have, by itself, the
8 highest share of the compensable JSC
9 programming than any other distant signal?

10 A. Can you repeat that?

11 Q. Does WGNA have the highest share of
12 compensable programming in minutes for sports
13 than any other distant signal?

14 A. You mean just total minutes it airs or
15 minutes times subscribers who view it or -- I
16 don't know. I mean, I know there's -- WGNA
17 goes to many, many systems and it airs a lot of
18 sports. So I know it's important to the
19 overall sports-watching.

20 Whether it's the most minutes as
21 minutes are measured in some way, I don't know.

22 Q. Minutes weighted by subscribers.

23 A. I think so.

24 Q. Now, you've also testified that the
25 regression results corroborate the Bortz

1 results; is that right?

2 A. Yes.

3 Q. And, in fact, you describe your
4 regression results as compelling because they
5 yield extremely similar numbers to the Bortz
6 numbers for sports in particular. Do you
7 recall that?

8 A. Right. I found that compelling
9 evidence for the valuation on sports in
10 particular, yes. And then I go on to talk
11 about other similarities.

12 Q. You also said that the similarity of
13 your regression results and the Bortz results
14 are compelling economic evidence of proper
15 allocations of the top three categories. Is
16 that right?

17 A. Yes.

18 Q. And that the proper split between the
19 top three categories and the bottom three
20 categories, right?

21 A. Right. Those are the sort of ways in
22 which Bortz -- in which the regressions
23 corroborate Bortz that we talked about this
24 morning.

25 Q. I'm curious, is there a survey

1 principle that supports the notion that your
2 regression results are corroborative of the
3 Bortz results simply because there's similarity
4 in the ranking order of the results?

5 A. I don't know if it's a survey
6 principle. I can say my -- you know, my work
7 in economics and econometrics, if you find two
8 very different methodologies that produce
9 similar rank -- similar valuation rankings, you
10 know, that, frankly, usually doesn't happen and
11 is unlikely to happen by chance that you would
12 do six in a row in the right order.

13 So I think if you think about what's
14 the probability that would happen if it weren't
15 true, that's quite corroborative that the
16 survey is measuring the right thing.

17 Q. And what two -- what two analyses are
18 you referring to, the Bortz survey and your
19 analysis or your analysis on Dr. Crawford's?

20 A. Here I was referring to Bortz and my
21 analysis.

22 Q. Okay. And -- but this is just by --
23 there's no economic principle or statistical
24 principle that guides you in this particular
25 assertion?

1 A. I mean, sure, there's a statistical
2 principle, right? The statistical principle
3 would say if Bortz had the rankings wrong and
4 then I went and used another completely
5 independent method, what would be the
6 probability that just by chance that other
7 independent method would rank them from one to
8 six in the same order?

9 And think about drawing six
10 consecutive numbers like out of a hat. The
11 odds that you would match the ranking would be
12 very low.

13 So, statistically, the fact that the
14 rankings go in the same order is strong
15 evidence that that order -- that the survey
16 that generated that order was a valid survey.

17 MR. OLANIRAN: Perhaps you had a
18 question.

19 JUDGE BARNETT: I want to know when
20 we're at a breaking point. How much more do
21 you have?

22 MR. OLANIRAN: I probably have another
23 20 minutes or so.

24 JUDGE BARNETT: Okay.

25 MR. OLANIRAN: Or so.

1 (Laughter.)

2 JUDGE BARNETT: Do you want to ask
3 your follow-up question and then we can take
4 our break?

5 BY MR. OLANIRAN:

6 Q. I just had one more question. Does it
7 matter -- strike that.

8 What if the ranking order in those two
9 analyses were 10, 11, 12 -- in one was 10, 11,
10 12, and the other one was 24 and 1? Would you
11 conclude that they are similar because the
12 ranking order is the same?

13 A. You mean what if the values underlying
14 them were --

15 Q. Yes. Were 10, 11, and 12, and 24 and
16 1?

17 A. Then I would look at the rank ordering
18 as one piece of evidence that was
19 corroborative, but in that case I would say
20 your top values are quite far apart. In my
21 experience, as I said before, something
22 regressions should do well is measure the value
23 of kind of the most important categories.

24 Q. So rank --

25 A. I would say the ranking was

1 consistent, but it certainly wouldn't match
2 what I found here, which is that not only the
3 ranking but many of -- but the values at the
4 top and the split of value between the top and
5 the bottom are all consistent.

6 Q. So mere ranking alone really does not
7 -- is not evidence of corroboration, is it?

8 A. It's one indicator.

9 MR. OLANIRAN: Okay. I can take a
10 break. Thank you.

11 JUDGE BARNETT: We'll be at recess for
12 15 minutes.

13 (A recess was taken at 3:17 p.m.,
14 after which the trial resumed at 3:36 p.m.)

15 JUDGE BARNETT: Please be seated. Mr.
16 Olaniran?

17 MR. OLANIRAN: Thank you, Your Honor.

18 BY MR. OLANIRAN:

19 Q. Dr. Israel, would you please turn to
20 page 22 of your testimony.

21 A. The initial -- my original testimony?

22 Q. Yes. Exhibit 1003.

23 A. Okay.

24 Q. Are you there?

25 A. Yes.

1 Q. Okay. And let's look at Table 4-4 --

2 I'm sorry, V-4.

3 A. Okay.

4 Q. Are you there?

5 A. Yes.

6 Q. And this is a table that you rely on
7 for the proposition that your regression
8 results corroborate the Bortz results, correct?

9 A. Yeah, that's what I rely on it for,
10 that's correct.

11 Q. And that table shows the four years of
12 the Bortz results, the four-year average and
13 then your regression average, right?

14 A. Yes.

15 Q. Okay. And I think -- and it is the
16 four-year Bortz average that you compared to
17 your regression results that's in the last
18 column to establish that there is a
19 corroboration between your results and the
20 Bortz results; is that correct?

21 A. I mean, that's one thing that I
22 compare. The text also does some comparison of
23 the range of the Bortz results to my results
24 and some other comparisons.

25 Q. And you don't -- you didn't present a

1 year-by-year regression analysis for this
2 proceeding, correct?

3 A. I didn't present results year-by-year.
4 As my report indicates, I did do a statistical
5 test to see if the coefficients were different
6 by year.

7 And the statistical tests found they
8 were not. There was no evidence that they were
9 different by year. So, therefore, I collapsed
10 them into a single average.

11 Q. When you say you did a test to see
12 whether the coefficients were different by
13 year, what do you mean by that?

14 A. So there is a thing in a regression
15 called an F test. But basically you ask
16 whether, if you let the regression be more
17 flexible, so that it had different
18 coefficients, different values per minute for
19 each year, you know, is there a statistical
20 support for that sort of variation.

21 And I did that statistical test and
22 didn't find support for that variation. So
23 that would indicate that, according to the
24 statistics, it's valid to collapse the results
25 into a single combined average.

1 Q. Do you understand that the royalty
2 funds at issue in this case are separate funds
3 for each year?

4 A. Yes.

5 Q. And do you also understand that the
6 Claimants to each year's fund may not always be
7 the same from year-to-year?

8 A. I guess I didn't know that detail, but
9 I take your word for it.

10 Q. Okay. And so if they are
11 year-by-year, if there are significant
12 mismatches between your analysis and the Bortz
13 results, the way that you have presented your
14 analysis would mask those mismatches, would
15 they not?

16 A. I mean, no, I don't agree with that
17 because, as I said, there is no statistical
18 evidence for significant differences across the
19 years in my regression.

20 So I think doing that sort of
21 year-by-year comparison with my regression
22 would not make sense given that the regression
23 doesn't find statistically-significant
24 differences across years.

25 Q. And so -- but, in fact, because your

1 regression is a three-year average, to the
2 extent those variations exist, when you match
3 -- if you had done a year-to-year and you had
4 done a head-to-head comparison with Bortz
5 versus your regression, but if there were
6 significant differences between the results,
7 notwithstanding, you know, the statistical
8 test, we would not know, would we, because you
9 didn't do a year-to-year?

10 A. I mean, you wouldn't see them here
11 but, again, that's because I don't want to show
12 results that aren't statistically meaningfully
13 different by year and present that as a valid
14 year-by-year comparison.

15 Another way to say it is, given that
16 there is no statistically-significant
17 differences across the years of my regression,
18 the best way to present the results is to pool
19 them so that you get the benefit of the three
20 years combined.

21 Q. You are polling a three-year versus a
22 four-year, are you not?

23 A. It is true that I am comparing the
24 three years versus a Bortz four-year number. I
25 mean, you can look at the numbers for 2013

1 relative to his average and see where that
2 would move the needle.

3 Q. And in your testimony you discuss how
4 your regression results fall within the minimum
5 and maximum ranges of the Bortz results for
6 Sports, Commercial Television, Public
7 Television, and Program Suppliers.

8 Do you recall that? I think it is in
9 paragraph 40 of page 21, I think, of your
10 testimony you said that.

11 A. Right. We discussed this earlier. I
12 think I said it falls within the range for
13 Sports and for Commercial.

14 For Program Suppliers, it is just
15 below the bottom end of the range.

16 Q. And I think you said Public Television
17 also, did you not?

18 A. I don't know. I mean, for Public
19 Television, my number is not within the range
20 of the Bortz numbers. As we discussed, there
21 has been -- that provides some support for an
22 adjustment to the Bortz numbers, as we
23 discussed this morning.

24 Q. But in paragraph 40 of your -- of your
25 testimony, you say that for the four highest

1 valued categories of programming, the 2012
2 results are in accord with the results of the
3 2010 Bortz survey on the -- on the rank order.

4 So you are not contesting that all
5 four fall within; you are saying that they just
6 are in the same rank order. Is that right?

7 A. Correct. That first sentence is, as
8 we have been saying, there is a rank order
9 comparison and then there is a comparison of
10 the value particularly for the top categories.

11 That first sentence is about the ranks
12 and then I go on to the value comparison.

13 Q. Now, did you do an apples-to-apples
14 comparison to determine where your regression
15 -- where your regression values fall within the
16 2010-2012 Bortz result ranges?

17 A. I don't know what you mean by an
18 apples-to-apples.

19 Q. Did you do a Bortz average from 2010
20 to 2012 versus your average from 2010 to 2012?

21 A. I haven't done that particularly. I
22 talked about the evidence that I looked at from
23 Crawford and Bortz to indicate 2013 wouldn't
24 move the needle materially, but I have not
25 explicitly laid out the same years.

1 As I mentioned earlier, I was trying
2 to corroborate, so I looked at the full Bortz
3 data versus my full data. But I have not done
4 the just 2010 through 2012 on Bortz.

5 Q. Can you please put up the next slide,
6 please.

7 Dr. Israel, I have a demonstrative
8 exhibit that I wanted you to take a look at.
9 And the exhibit has -- the first column has the
10 list of the different program categories. And
11 then it has the Bortz results for three years.

12 The next column after that is the
13 2010-'12 Bortz average for those three years.
14 And then the next column is your 2010 through
15 '12 regression.

16 And then following that is the
17 question whether or not if your regression
18 falls within the Bortz minimum/maximum
19 estimates.

20 Have you taken a minute to look at
21 that?

22 A. I see it, yes.

23 Q. And, I mean, the column labeled D is
24 actually a calculated column. If you need to
25 check the math on that, there's a calculator

1 next to you.

2 A. I will take your word for it.

3 Q. Okay. I don't know.

4 A. I will take the word of whoever did
5 the calculation.

6 Q. Yeah, subject to -- subject to check.
7 And so when you adjust for apples-to-apples
8 with three-year averages, so with respect to
9 your regression results for the Sports program,
10 do they fall within the minimum/maximum range?
11 Does it -- does your regression average fall
12 within the minimum/maximum range for Sports?

13 A. Yes.

14 Q. And what about for Program Suppliers?

15 A. No, it is slightly below the bottom
16 end as it was in my previous comparison.

17 Q. And what about for Commercial
18 Television?

19 A. Yes.

20 Q. And what about Public Television?

21 A. No, it is higher, as we discussed.

22 Q. And for Devotional and Canadian
23 Claimants, they are not in the range at all,
24 are they?

25 A. Right, because it gives you the zero

1 value, as we've discussed. I would notice that
2 that pattern of yes's and no's is exactly what
3 it was when I did my 2010 to 2013 comparison.

4 Q. And with regard to -- we can close
5 that screen.

6 In your regression analysis, the
7 coefficient is the price, if you will, is it
8 not, and if you think in terms of -- and
9 correct me if I am wrong, this is how I think
10 about it -- in terms of market value, you are
11 looking at some type of price and then you are
12 looking at some type of quantity. Is that
13 right?

14 A. I mean, as we discussed, the price is
15 coming out of the regulations. So I think the
16 coefficient is correctly thought of as a
17 measure of the buyer's side value on the
18 content.

19 Q. But -- I'm sorry.

20 A. Go ahead.

21 Q. So what do you mean by the price is
22 coming out of regulation? What price are you
23 referring to? The coefficient?

24 A. No, I mean the -- the regression is
25 based on buyers choosing programming, given a

1 fee schedule which is set by the statute. And
2 so the price that the buyer has to pay for more
3 content is whatever the fee schedule says.

4 And the regression then looks at
5 choices made given that fee schedule to
6 determine the values that the buyer puts on the
7 content.

8 So I think it is very similar to
9 something that in industrial organization is
10 called a hedonic regression. But it is
11 basically measuring the value that buyers put
12 on different product characteristics as a
13 function of what they have to pay for them.

14 Q. What is a function of that value in a
15 marketplace where royalty payments don't exist?

16 A. I mean, as I have discussed, the way
17 the market -- in every setting where there is a
18 free market between a CSO and a network
19 provider, that I know of, those prices get set
20 by negotiation between the network and the CSO.

21 And economics teaches us that the
22 value that will be arrived at in those
23 negotiations is basically some fraction, often
24 assumed to be 50/50, but it is not
25 insignificant, it is some fraction of the

1 buyer's willingness to pay.

2 And so the function of those buyer
3 values is that they set the value or what
4 economists call the surplus that is being
5 negotiated over when the network and the CSO
6 negotiate to arrive at a price.

7 Q. But the royalty payments that you've
8 used don't exist in that market, in the
9 hypothetical market. Once regulation is gone,
10 so are the royalty payments, correct?

11 A. Correct, but the values are the
12 buyer's actual values and those are what drive
13 the negotiation to determine the price.

14 Q. I mean, what -- if royalty payments
15 didn't exist, you don't have any other evidence
16 of what the value would be, other than the
17 cable content analysis, correct?

18 A. No. The evidence of the value is
19 based on the choices that buyers make. I mean,
20 as I have said, it is very common in economics
21 to have regulated prices and to learn from the
22 decisions that buyers make given those
23 regulated prices.

24 So that the information -- I am not
25 assuming the price schedule stays the same.

1 I'm assuming that the values that I derive from
2 the choices that buyers make given that price
3 schedule are still the relative -- relevant
4 values to determine the prices in the free
5 market.

6 Q. But those values are not based on the
7 free market, are they?

8 A. They are based on the choices that the
9 buyers make, given the price schedule. What
10 you want to do is measure the buyer's values.

11 So given a price schedule, whether it
12 be regulated or determined from a market, if
13 you see the choices that buyers make given
14 those prices, you could determine what the
15 buyers value.

16 Q. On those choices within the regulated
17 market?

18 A. They are choices -- buyers face a
19 price schedule and they make choices. It is
20 very common in economics.

21 In fact, it has been done in a fair
22 bit of my own research, where you take choices
23 that are made in one regulatory setting, you
24 use those choices to infer what -- the value
25 the buyers must put on the product, and then

1 you use those values to determine what would
2 happen in a different market.

3 Q. You haven't answered my question. Are
4 those choices the choices that your modeling
5 made in the regulated market or not? Yes or
6 no.

7 A. They are made with regulated prices
8 but that doesn't change the analysis.

9 Q. Well, is that a yes or a no?

10 A. They are made -- your question was are
11 they made in a regulated price setting?

12 Q. The choices that you have modeled, are
13 they not made in a regulated -- in a regulated
14 environment?

15 A. They are made in a regulated
16 environment, against a regulated price control.

17 Q. And I wanted to -- I know earlier when
18 you were talking to -- when you were being
19 examined by Mr. MacLean, he mentioned
20 comparisons within Dr. Crawford's results and
21 your results, but he used figure 16, I think,
22 in Dr. Crawford's results.

23 And so if you look on the screen,
24 there is another demonstrative exhibit that
25 took the results right out of yours and Dr. --

1 the results of your coefficients, and
2 Dr. Crawford's testimony, figure 19, I believe,
3 and your -- and your regression coefficients,
4 which I think is on page 22 -- 52.

5 And, again, not to belabor the point,
6 Dr. Crawford's result, I believe, is when he
7 uses the non-duplicated minutes. So in making
8 that -- this comparison, for live team sports,
9 Dr. Crawford has, as you can see .963, and you
10 have, again, 4.836.

11 Would you consider this a significant
12 difference in coefficient results?

13 A. I mean, again, as I said, the numbers
14 are quite different, but you can't compare --
15 given the difference in the functional forms,
16 the log and the linear and what is controlled
17 for in the regressions, you can't -- there is
18 no meaning to just comparing those two numbers.

19 Q. So are you answering my question with
20 a yes or a no? Is this a significant
21 difference?

22 A. I honestly --

23 MR. LAANE: I object. The question
24 can't fairly be answered with a simple yes or
25 no.

1 JUDGE BARNETT: Sustained.

2 BY MR. OLANIRAN:

3 Q. With respect to -- with respect to
4 live team sports, looking at Dr. Crawford's
5 regression, is there significant mathematical
6 difference between the two numbers?

7 A. I mean, I don't know. Significant to
8 me would mean is there a statistical
9 difference.

10 Q. I am not asking about a statistical
11 difference.

12 A. That's what the word significant means
13 to me. But if you mean is there a large --
14 there is a -- I don't know how to answer that.
15 The numbers are clearly different. They are
16 not economically comparable. So I don't know
17 how to interpret the size of that difference.

18 Q. Actually I said is this a significant
19 mathematical difference, not in the statistical
20 sense.

21 A. I mean, they are different. I don't
22 know how to say if it is significant if I don't
23 know how to interpret the numbers.

24 Q. Well, there is -- there is a
25 difference of probably about close to \$3, about

1 3 plus dollars; is that correct?

2 A. Yes, there is a difference of that
3 amount.

4 Q. And then for Program Suppliers,
5 Dr. Crawford has Program Suppliers at .069.
6 And in your regression, you have Program
7 Suppliers at .469, your coefficient of Program
8 Suppliers at .469. Right?

9 A. Right. Again, I have to stress those
10 are measuring different things. One is the
11 marginal minute in a logarithmic regression.
12 One is the linear average as we discussed
13 earlier but, yes, that's the difference between
14 the numbers.

15 Q. So you are saying there is a
16 difference between your coefficient results and
17 Dr. Crawford's?

18 A. Because there is such a -- there is a
19 difference in the whole regression
20 specification, then there is going to be a
21 difference in the coefficients. And you really
22 need to go to the shares to measure the
23 comparison.

24 Q. Well, let me make sure I understand
25 this then. The regression -- the coefficients

1 of the results of the regression analysis are
2 for each of you; is that correct?

3 A. Yes, but they mean something different
4 in the two regressions.

5 Q. I understand. I understand what you
6 are saying. But the minutes that you use are
7 not part of the regression; is that right?

8 A. I mean, they are data in the
9 regression. They are not part of the
10 regression output.

11 Q. The values that are in this
12 demonstrative are the values that you apply to
13 the minutes to get an implied share?

14 A. They certainly are from my column.
15 Because mine is linear. So you can multiply
16 the coefficient times the minutes and get the
17 implied share.

18 Dr. Crawford has a logarithmic form,
19 which means the coefficient, you can't just
20 multiply it times the minutes. You need to
21 account for the non-linear form he is using.

22 Q. So basically in terms of the
23 corroboration that you speak to with regard to
24 your results and Dr. Crawford's results, you
25 are really referring to just implied share,

1 correct?

2 A. That's correct.

3 Q. And the implied shares include the
4 minutes which are not part of the regression
5 results at all; is that correct?

6 A. They are not part of the regression
7 results, I agree with that.

8 Q. Dr. Israel, you said that you prepared
9 your regression analysis for 2010 and 2012
10 sometime before the Judges issued an order
11 consolidating the 2013 cable royalty year with
12 2010 and 2012. Do you recall that?

13 A. I mean, certainly acquired the data
14 for the earlier years and had begun doing the
15 work. I don't remember the timing of when the
16 order came out. But what I'm certain of is we
17 had already acquired the data for 2010 to 2012
18 when 2013 was added.

19 Q. And why, again, did you not do a
20 regression for 2013?

21 A. Because I saw the purpose as to
22 corroborate to see if the Bortz survey results
23 are matching what's going on in the
24 marketplace. And in my view, having a
25 three-year comparison provides a good

1 experiment to do that corroboration.

2 Q. And you didn't think it was important
3 to do a 2013? Did you seek to do it at all?

4 A. No, I mean, I -- again, the question
5 from my point of view, the assignment I had
6 been given was take the Bortz survey results,
7 see if they are consistent with marketplace
8 evidence.

9 And, you know, if they are consistent
10 for three years, that's a very strong
11 corroboration of a survey. So I didn't -- I
12 had a very nice experiment based on the first
13 three years to answer the question I had been
14 asked to answer.

15 Q. And the statistics test that you
16 mentioned that you did, was that a statistical
17 test with regard to your comparison of your
18 results in Bortz or your results in
19 Dr. Crawford's?

20 A. I mean, the statistical test -- I am
21 not sure which statistical test you mean.

22 Q. You mentioned a statistical test to
23 see whether or not doing another year's
24 regression would have made a difference.

25 A. The test I actually meant was within

1 my own regression to see if 2010, 2011, and
2 2012 were different from each other. And they
3 weren't. So I reported the average.

4 The -- the test I did to look at 2013
5 was really just comparing the coefficient --
6 the shares that I got versus what Crawford got
7 when he added '13 versus what Bortz had in
8 2013. And those shares were -- were quite
9 similar.

10 Crawford 2013 matches Bortz 2013 as
11 well as the earlier years. Crawford 2013
12 matches my earlier years quite well. And so
13 that just -- it was one more piece of evidence
14 that adding 2013 hadn't changed the story in
15 any material way.

16 But, again, my key, what you can take
17 away from my regression which is on 2010 to
18 2012, is that marketplace evidence from those
19 three years corroborates what is in Bortz.

20 Q. And in general, if you had all of the
21 data that you needed, the computer to construct
22 a regression model, how long would it take you
23 to do that, if you had all the data?

24 A. If I started with all the data? What
25 am I being asked to do, just add another year?

1 Q. Yes.

2 A. If I already had all the data, then
3 running the regression would be -- you would
4 have to clean it and check it, but running the
5 regression would be reasonably quick.

6 Q. What's quick, a day, two days?

7 A. I don't know. More like weeks
8 probably by the time you check the data and
9 everything. But certainly a week, two weeks,
10 something like that, once you have all the
11 data, which is -- and clean it. That's a big
12 part of the process.

13 Q. Okay. You said you didn't recall when
14 the Judges ordered consolidation of 2010
15 through '12 and 2013; is that right?

16 A. That's right.

17 Q. Let me represent to you that the
18 Judges issued an order on September 9 of 2015.
19 All right?

20 A. Okay.

21 Q. When did you submit your testimony?

22 A. The date is on it. I think it was
23 late 2016.

24 Q. That would be December of 2016; is
25 that correct?

1 A. Yes.

2 Q. So between September 2015 and December
3 2016, you didn't think it was important to do a
4 regression analysis for 2013?

5 A. I mean, again, my answer is going to
6 be the same. I thought the three-year test, if
7 you compare three years of market data to three
8 years from a survey, you have a nice
9 experiment.

10 And so I concluded I had met the
11 assignment I had been given, which was to see
12 if the Bortz results were corroborated by
13 marketplace evidence.

14 It was marketplace evidence from 2010
15 to 2012. And then later results came out from
16 2013 from Crawford, which provide one more
17 piece of evidence.

18 But my decision was based on the fact
19 that I could give an affirmative corroboration
20 answer based on a three-year experiment.

21 Q. And did anyone ask you to do the 2013
22 analysis at all?

23 A. No.

24 Q. I'm sorry?

25 A. I said no. I didn't know if you

1 didn't hear me.

2 Q. No one cared whether or not you did
3 the 2013 analysis?

4 MR. LAANE: Objection, argumentative.

5 JUDGE BARNETT: Sustained.

6 BY MR. OLANIRAN:

7 Q. On page 9 of your testimony, you quote
8 language from the CARP's '90-'92 determination
9 allocating royalties among various Claimants
10 for the '90-'92 royalty years.

11 Do you recall that?

12 A. Yes.

13 Q. And you should have somewhere
14 thereabouts where you sit a black binder with a
15 green cover. Do you have that? It might be
16 behind you, I think.

17 A. Yeah. There is a few of them. I hope
18 I get the right one. Okay.

19 Q. Would you please look at the
20 exhibit marked as Exhibit 6034.

21 A. 604?

22 Q. 6034.

23 A. I see it.

24 Q. And is that the report that you quote
25 on page 9 of your testimony?

1 A. Let me just confirm.

2 Q. Well, you can go to, I think, page 65,
3 I think, of that report and compare it to the
4 quote you have on page 9 of your testimony.

5 A. Yep, I see it.

6 Q. And that's the quote that you have in
7 your testimony on page 9; is that correct?

8 A. It looks like it, yes.

9 Q. Okay. And so is this the report that
10 you relied on in -- as part of your testimony,
11 right?

12 A. I certainly reviewed it and certainly
13 relied on this conclusion about the Bortz
14 survey. I don't, as I sit here, remember every
15 page of it. But, yes, certainly I relied on it
16 for purposes of its conclusions about the Bortz
17 survey.

18 Q. Okay. And this is just, for the
19 record, this is the cover letter to that report
20 that's dated May 31st, 1996. And it is -- the
21 subject line is Covering Arbitration Royalty
22 Panel, Cable Royalties For the Years 1990
23 through 1992. Right?

24 A. That's what it says, yes.

25 Q. Okay.

1 MR. OLANIRAN: Your Honor, move to
2 admit Exhibit 6034.

3 JUDGE BARNETT: 6034 is admitted.

4 (Exhibit Number 6034 was marked and
5 received into evidence.)

6 BY MR. OLANIRAN:

7 Q. Now, you spoke earlier about viewing,
8 in response to many of the questions that you
9 said that CSOs don't care about viewing. Is
10 that right?

11 A. No, I don't think I said that. I
12 think I said they ultimately care about the
13 effect of additional content on their
14 profitability, of which viewing is one of many
15 factors.

16 Q. But you didn't think viewing was a
17 component of value, did you? You don't think
18 viewing is a component of value?

19 A. I mean, again, I think viewing -- the
20 extent of viewership is one characteristic of
21 content. I'm not saying it is entirely
22 irrelevant. I am just saying it is not the
23 same thing as value and there is many other
24 relevant factors.

25 Q. Are you aware of -- do you know

1 whether or not this report speaks to whether or
2 not viewing is part of value?

3 A. I don't recall as I sit here. I think
4 I recall in previous statements people saying,
5 you know, in general reports saying viewing was
6 one component of value, as I -- as I have said,
7 but I don't recall the specific language in
8 this report, or in this finding.

9 Q. Let me -- would you please turn to
10 page 44 of that report, of Exhibit 6034.

11 A. 44?

12 Q. Yes. Are you there?

13 A. Yes.

14 Q. And let me direct your attention to
15 the fourth line in the carry-over paragraph, do
16 you see that, the second -- the third full
17 sentence? It is on the fourth line. Do you
18 see that?

19 A. Yes.

20 Q. Would you please read that into the
21 record through the end of that paragraph?

22 A. Sorry. Where do you want me to start?

23 Q. "It is," do you see that?

24 A. "It is disingenuous"? There?

25 Q. Yes.

1 A. I can read it. "It is disingenuous to
2 say that the cable system is interested only in
3 attracting subscribers but is totally
4 unconcerned with whether or not the subscriber,
5 in fact, watches the programming. As was
6 stated by Sieber, who testified for the Program
7 Suppliers, cable system operators are more
8 willing to carry the more heavily watched,
9 higher rated services. Cable system operators
10 receive Nielsen data in a variety of ways."

11 Q. Let me also direct you to the last
12 paragraph on that page. It is the one that
13 starts with "in conclusion."

14 A. Yes.

15 Q. Would you please read that into the
16 record?

17 A. Sure. "In conclusion, we accept the
18 Nielsen data for what it purports to be, a
19 survey of actual conduct with adequate accuracy
20 for the larger Claimant groups in particular.
21 We cannot quantify the Nielsen statistics as
22 evidence of market value other than to say that
23 actual viewing is very significant when weighed
24 with all other factors."

25 Q. Okay. Now, the language you just read

1 is inconsistent with your testimony this
2 afternoon, is it not?

3 A. I think it is completely consistent
4 with my testimony. Consistent.

5 My testimony is that viewing is one
6 characteristic of programming, I don't say it
7 is irrelevant, but it is one of many factors.
8 I think that's what this says.

9 MR. OLANIRAN: I have no further
10 questions, Your Honor. Thank you.

11 JUDGE BARNETT: Thank you, Mr.
12 Olaniran. Anything from Commercial Television?

13 MR. STEWART: No, Your Honor.

14 MR. LAANE: One very brief follow-up,
15 Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. LAANE:

18 Q. If you go back, Dr. Israel, to
19 Exhibit 6034 and page 65 that you were asked
20 about?

21 A. Remind me of the page again.

22 Q. 65.

23 A. Yep.

24 Q. At the very bottom of that page, did
25 the Panel indicate that the Bortz survey was

1 focused more directly than any other evidence
2 to the issue presented, relative market value?

3 A. That's what it says, yes.

4 MR. LAANE: Nothing further.

5 JUDGE BARNETT: Is Mr. Hartman
6 available?

7 MR. LAANE: He is, Your Honor.

8 JUDGE BARNETT: Then let's get
9 started.

10 (The witness stood down.)

11 JUDGE BARNETT: Thank you, Dr. Israel.
12 Sorry.

13 THE WITNESS: Thank you.

14 JUDGE BARNETT: Thank you.

15 Please be careful finding your way to
16 the chair.

17 MR. HARTMAN: Yes, I will not trip on
18 anything.

19 JUDGE BARNETT: If you would, please,
20 raise your right hand.

21 THE WITNESS: Sure.

22 Whereupon--

23 DANIEL HARTMAN,
24 having been first duly sworn, was examined and
25 testified as follows:

1 JUDGE BARNETT: Please be seated.

2 MR. CANTOR: Good afternoon, Your
3 Honors. Dan Cantor of Arnold & Porter for the
4 JSC.

5 DIRECT EXAMINATION

6 BY MR. CANTOR:

7 Q. Good afternoon, Mr. Hartman.

8 A. Good afternoon.

9 Q. Would you please introduce yourself
10 for the Court.

11 A. Yes. My name is Dan Hartman.

12 Q. Would you please just give us a brief
13 background, overview, of your professional
14 background?

15 A. Sure. I have been in the television
16 and media business for 20 plus years,
17 negotiating for content, kind of
18 valuing/acquiring that content.

19 I currently serve as president of
20 Hartman Media Services, a consulting company.

21 So I provide consulting services to
22 various media clients, including content owners
23 like cable channels, content distributors like
24 satellite cable, new entrants to the market,
25 and I do a -- I do a lot of work with financial

1 institutions kind of giving advice, strategy,
2 background on just the -- this is in general,
3 whether it is the cable distributors or the
4 networks themselves, content companies.

5 Q. Now, where did you work before Hartman
6 Media?

7 A. Prior to that I was at DirecTV for 15
8 years. I spent the last seven of that as
9 Senior Vice President of Programming
10 Acquisitions.

11 So in that role I was basically
12 responsible for acquiring all the content that
13 you see on the -- on your channel guide, so
14 general entertainment networks, sports
15 networks, ESPN, kind of out-of-market sports
16 packages like your NBA League Pass, pay TV
17 channels like HBO, and also during that period
18 the group that negotiated the local station
19 carriage and the distant signals reported into
20 me as well.

21 JUDGE BARNETT: Could you put the
22 microphone closer?

23 THE WITNESS: Oh, sure.

24 BY MR. CANTOR:

25 Q. And I believe you said you negotiated

1 terms of carriage when you were at DirecTV. Is
2 that correct?

3 A. Yes.

4 Q. Do you have just a rough estimate of
5 about how many terms of carriage you may have
6 negotiated while you were at DirecTV?

7 A. Yeah. It would have been in the
8 hundreds, I'm sure.

9 Q. And where did you work before DirecTV?

10 A. Prior to that I was at Fox
11 Broadcasting Company. So I -- and there I
12 basically just served as in-house legal counsel
13 for the broadcast network. Mostly I was the
14 attorney for the Fox Sports Group.

15 Q. Do cable and satellite distributors
16 compete for the same customers?

17 A. Yeah, they do. The business model is
18 basically, I would say, the same. You are
19 getting revenue from the customers coming in.
20 And that's kind of the lifeblood of your
21 business.

22 The -- you know, we compete, I would
23 say, on programming, pricing, packaging. When
24 I was at DirecTV certainly cable was the -- by
25 far the biggest competitor we had.

1 MR. CANTOR: Your Honors, the JSC
2 offer Mr. Hartman as an expert in the valuation
3 of television programming by multi-channel
4 video program distributors.

5 MS. PLOVNICK: Voir dire, Your Honor?

6 JUDGE BARNETT: Yes.

7 VOIR DIRE EXAMINATION

8 BY MS. PLOVNICK:

9 Q. Good afternoon, Mr. Hartman.

10 A. Good afternoon.

11 Q. My name is Lucy Plovnick. I represent
12 the Program Suppliers.

13 Have you ever worked for a cable
14 operator?

15 A. I have not worked for a cable
16 operator. Like I said, I think the business
17 models are the same.

18 Q. And your experience is at DirecTV,
19 which is a satellite carrier; is that correct?

20 A. It is a satellite carrier, correct.

21 MS. PLOVNICK: Your Honor, we would
22 object to the proffer as overly broad. I guess
23 I can ask one more question.

24 BY MS. PLOVNICK:

25 Q. Would you define MVPD as including

1 both cable and satellite carriers?

2 A. Yes.

3 MS. PLOVNICK: Your Honor, JSC has
4 offered him as an expert in this MVPD
5 decision-making, but that includes cable
6 operators, not just satellite carriers. And
7 his experience is limited to satellite.

8 So we would object as an overly broad
9 offer of his experience.

10 JUDGE BARNETT: Mr. Cantor, would you
11 like to inquire further or respond?

12 MR. CANTOR: If I may, Your Honor, I
13 will both inquire further and then respond.

14 JUDGE BARNETT: Okay.

15 DIRECT EXAMINATION - Resumed

16 BY MR. CANTOR:

17 Q. Mr. Hartman, when you were at DirectTV,
18 did the programming that you were negotiating
19 for, was that the same type of programming that
20 cable operators negotiated for?

21 A. Yes, it was the same. And, in fact,
22 the contract terms would be pretty much the
23 same and, you know, rates, all the -- all the
24 terms, I guess, we would negotiate for I think
25 would be the same as a cable company would

1 negotiate for.

2 Q. And when you were at DirectTV, did
3 DirectTV carry WG -- distantly carry WGNA?

4 A. Yes, it did.

5 MR. CANTOR: Your Honor, if I may
6 respond to Ms. Plovnick?

7 JUDGE BARNETT: Yes.

8 MR. CANTOR: Mr. Hartman is a highly
9 qualified expert in the field of -- in the
10 industry of multi-platform -- multi-channel
11 video distributors.

12 He is someone who has negotiated
13 hundreds of agreements for content, and it is
14 an industry that is not just limited to cable,
15 but includes both satellite distributors as
16 well as telecom distributors as well.

17 So this is someone square right in the
18 middle of the very industry that we're talking
19 about in this proceeding.

20 MS. PLOVNICK: Your Honor, we don't
21 have an objection to Mr. Hartman testifying
22 based on his experience as a satellite carrier,
23 but he is not a cable operator.

24 So we think the proffer should be
25 limited to qualify him as a satellite carrier

1 expert.

2 MR. CANTOR: And if I may respond to
3 that as well. I think this is just an area
4 that is proper for cross-examination, that if
5 others disagree with his qualifications to
6 comment about the main competitors in the cable
7 industry, that that's something that can be
8 brought out on cross.

9 But this is someone who is, again,
10 square right in the middle of this industry,
11 and been involved with cable and satellite.

12 JUDGE BARNETT: Mr. MacLean?

13 MR. MacLEAN: Your Honor, the SDC also
14 has an objection to the qualifications of this
15 expert.

16 And we, although we do believe that a
17 foundation has been laid for an expert in
18 something, we would object to his qualification
19 as an expert in valuation absent any foundation
20 for any experience in appraisal or other
21 valuation techniques.

22 We put an objection on that basis to
23 his expertise as -- in that way.

24 JUDGE BARNETT: Thank you. Do you
25 want to respond to Mr. MacLean, Mr. Cantor?

1 MR. CANTOR: Sure. As you have heard
2 from Mr. Hartman, Your Honor, this is an expert
3 who has negotiated for all types of content
4 that are at issue in this proceeding, for
5 sports, for general entertainment, for
6 Devotional.

7 And as he has already said and as you
8 will also hear further in his testimony, he is
9 someone who had to decide whether to carry it
10 and what to pay for it, which goes to the very
11 heart of valuation of the programming.

12 JUDGE BARNETT: Now, would you state,
13 again, the areas in which you are asking that
14 he be qualified?

15 MR. CANTOR: Sure. We are asking that
16 he be qualified as an expert in the valuation
17 of television programming by multi-channel
18 video program distributors, and, if it's
19 helpful, I can ask him to define that for you.

20 JUDGE BARNETT: I'm going to consult
21 with my colleagues on this. It will just be a
22 few minutes.

23 (Judges confer outside the hearing room.)

24 JUDGE BARNETT: Please be seated.

25 MR. CANTOR: Your Honor, if I may, I

1 was hoping I could make just one more point on
2 this issue.

3 JUDGE BARNETT: You may.

4 MR. CANTOR: What we're talking about
5 here is in -- satellite and cable are two
6 different just technologies competing for the
7 same customers with the same product. It is
8 just the only difference that we're dealing
9 with is a difference in the transmission
10 technology.

11 So it is just one more reason why this
12 witness is fully qualified to be an expert
13 here.

14 JUDGE BARNETT: Ms. Plovnick?

15 MS. PLOVNICK: Your Honor, we have a
16 separate satellite proceeding here. We
17 actually moved to consolidate cable and
18 satellite and the Judges did not grant our
19 motion as to Phase 1.

20 So this is not -- cable and satellite
21 are not consolidated and so we would object.

22 JUDGE BARNETT: Okay. An expert --
23 I'm sorry I don't have the rule in front of me
24 and I can't quote the language precisely, but
25 the Judges may qualify an expert based on

1 either education, training, or experience.

2 Clearly Mr. Hartman has experience in
3 this industry and has direct experience in
4 negotiating programming carriage, station
5 programming, or station carriage, I believe is
6 his actual words.

7 And as to the difference between
8 satellite and cable, we believe that goes to
9 the weight of his testimony rather than to the
10 admissibility.

11 And for that reason Mr. Hartman is
12 qualified as an expert in valuation of
13 television programming in multi-channel video
14 distribution. Did I say all those words right?

15 MR. CANTOR: Correct.

16 JUDGE BARNETT: Okay. You may
17 proceed, Mr. Cantor.

18 MR. CANTOR: Thank you, Your Honor.

19 BY MR. CANTOR:

20 Q. Mr. Hartman, have you been retained as
21 an expert in this proceeding by the JSC?

22 A. Yes, I have.

23 Q. What was your assignment?

24 A. It was basically to provide, I guess,
25 use my experience as an MVPD executive to offer

1 my opinion as to the valuation of different
2 types of television programming.

3 Q. So you should have on the witness
4 stand there a binder with exhibits marked 1010
5 and 1011. Let's start with 1010 first, please.
6 Would you please tell us what 1010 is?

7 A. Yes. That's a copy of my written
8 direct testimony submitted in this proceeding.

9 Q. And what is Exhibit 1011?

10 A. That is a copy of my written rebuttal
11 testimony submitted in this proceeding.

12 Q. And did you prepare both Exhibits 1010
13 and 1011?

14 A. Yes, I did.

15 Q. Do you declare that Exhibit 1010, your
16 written direct testimony, is true and correct
17 and of your personal knowledge?

18 A. Yes, I do.

19 Q. Do you have any corrections that you
20 would like to offer regarding Exhibit 1011,
21 your written rebuttal testimony?

22 A. Yes. There is one correction on page
23 6, I believe, which is Table -- Table III.1, so
24 there it's just a listing of the -- of the
25 Major League Baseball telecasts on WGNA.

1 So for the year 2010, the White Sox
2 number should read 32 versus 33. So the total
3 there would reflect a 116 number versus a 117
4 number.

5 Q. I was going to ask, Geoff, if you
6 could please put Table III-1 up on the screen.

7 And if you could just repeat what you
8 were just saying, now that it is up on the
9 screen, if you could repeat what you were
10 saying for the Judges.

11 A. Oh, sure. Sure. So the only change
12 to this table is the number of White Sox games
13 in 2010 should be 32 versus 33. And so the
14 total at the bottom there should be 116 versus
15 117.

16 Q. And with this correction, do you
17 declare that Exhibit 1011, your written
18 rebuttal testimony, is true and correct and of
19 your personal knowledge?

20 A. Yes, I do.

21 Q. Thank you.

22 We have already talked about this a
23 little bit, but are you familiar with the
24 acronym MVPD?

25 A. Yes, it stands for Multi-channel Video

1 Programming Distributor.

2 Q. And would you please share with us
3 your understanding of that term?

4 A. Sure. I think of it as just more
5 traditional forms of distributing programming,
6 cable, satellite, telcos.

7 Q. Would you please provide us with an
8 overview of the competitive landscape of the
9 MVPD industry in the period 2010 to 2013?

10 A. Yeah, sure. I guess it would probably
11 be helpful to give a little bit of history on
12 the satellite business, which launched in the
13 mid 1990s.

14 And it was -- it started as more of a
15 rural play, kind of going after customers that
16 cable couldn't reach because they were the --
17 cable was the entrenched distributor. And so
18 both cable and the satellite grew for a long
19 period of time, 10, 15 years or so.

20 And so at some point in, I would say,
21 mid 2000s or maybe a little later, there, you
22 know, again, both companies were able to grow,
23 so both companies could bring on new
24 subscribers and be profitable.

25 And -- but as kind of the 2000s closed

1 out, the marketplace just became more
2 saturated.

3 So there were fewer customers to fill
4 the bucket with, meaning that instead of
5 growing the rates that cable or satellite had
6 been growing the last 15 years or so, that
7 growth had slowed because there were just no
8 customers, you know, from this bucket to fill.

9 So, in other words, cable and
10 satellite were kind of starting to take each
11 others' customers. And so at that point the
12 focus, I think, has been more on growth and
13 acquisition of customers.

14 And I think it kind of, when that
15 saturation point hit, it became more of a
16 retention play for both companies, kind of
17 making sure your customers stayed on the
18 platform. That -- that was the revenue source.

19 Q. And during this period did management
20 or containment of costs play a role in your
21 considerations?

22 A. Yeah, it did. I think, you know, it
23 is always a factor, but when you're not growing
24 at the rate that you had been growing, then
25 costs become an issue. And at a cable or

1 satellite company, programming costs were the
2 -- by far the biggest cost line item. So, yes,
3 there was more of a focus for sure.

4 Q. And so given this goal of customer
5 retention that you were just telling us about,
6 and the overlay of cost considerations as well,
7 were there particular characteristics of
8 programming that you were particularly looking
9 for as someone charged with making program
10 decisions at DirecTV?

11 A. Yeah. I think that, you know, as
12 this, again, focusing more on costs and then
13 what was important to the customer, I think
14 that you looked at really marquee or must-have
15 type programming, that -- basically programming
16 that I would say that if you lost or didn't
17 have that you were at high risk of losing your
18 customer because of it.

19 Q. Would you please give us an example of
20 what you're calling must-have or marquee
21 programming?

22 A. Yeah, I think live sports is really
23 honestly the best example. I think that there
24 are certain factors that, you know, if you had
25 a checklist of I think what was important to

1 keeping a customer on the platform, I think
2 live sports is really a great example of that.

3 I think there is, you know, multiple
4 factors. There is -- folks are really
5 passionate about sports. They are really
6 passionate about not just sports in general,
7 but their particular team.

8 So if you are a sports fan, you have
9 particular teams you follow and, you know,
10 you're just, I guess, yeah, you're just really
11 passionate about following that team or those
12 teams. And there is no other substitute for
13 that.

14 So -- and, you know, just not really
15 -- sports isn't really available many other
16 places. So you take the Cubs, for instance.
17 And if you want to catch your Cubs game and you
18 obviously are going to catch it live, it is
19 really only going to be on one channel.

20 So unlike some other types of
21 programming, you can't just kind of flip
22 through the dial and find it somewhere else.
23 It's -- it's -- you know, there is other sports
24 out there and there is other networks out
25 there, obviously, that carry sports, but if you

1 want to catch that game, it's pretty much going
2 to be on just one channel.

3 And so I think that -- and as I
4 mentioned, the fact that it is live is
5 important because I think that, you know,
6 people are just much more engaged in that kind
7 of programming, that they have to sit down and
8 watch kind of day and date for when it's on.

9 I think sports is fairly unique in its
10 content. There is nothing else like it out
11 there.

12 And I guess, kind of my prior point,
13 too, there is really no substitution for a
14 particular game. If you are, again, if you are
15 a Cubs fan and we weren't carrying WGNA, for
16 instance, or I didn't have the Yankees, I can't
17 go tell you to watch another team or another
18 sport because I just don't think -- you know,
19 again, there are many general sports fans, but
20 if you are a true fan of a team or teams, I
21 can't tell you to watch another -- a different
22 game. It is just not going to work.

23 Q. Are there examples of what you're
24 calling must-have programming other than team
25 sports?

1 A. Yeah. I think there are certain types
2 of content, like I think Game of Thrones is a
3 good example of, if you kind of ran back the
4 factors, I think it's certainly a very
5 passionate fan base, as you can see from social
6 media.

7 I think it is the type of programming
8 that people watch live or near live. I think
9 that it is not -- it is similar to sports in
10 that, you know, you don't want a spoiler, so
11 you want to catch it when it's on.

12 I think that a network like Fox News
13 is really kind of -- would fit into that
14 category. I think it is another -- it's a type
15 of network or content that has a really
16 passionate fan base. Obviously, again, people
17 watch that live.

18 It's a type of network or programming
19 that, if I didn't have, I think I would suffer
20 because of it.

21 Q. How about sitcoms, reruns of sitcoms
22 or old movies, do they have these must-have
23 qualities that you are speaking of?

24 A. No. I would say no, I think, because,
25 you know, again, if you kind of run through the

1 checklist, I don't think that it -- there is
2 certainly other avenues that you can find this
3 content on. I think there is other -- you can
4 find it on other channels a lot of times. You
5 can find it on other platforms.

6 I think if -- I know I use 30 Rock as
7 my example in my testimony, that it was carried
8 on WGNA at the time, the period we're talking
9 about here, 2010 through 2013, and the fact
10 that -- it was broadcast on WGNA but it was
11 also on, I believe, Comedy Central at the same
12 time. NBC was broadcasting their initial
13 broadcast premiers there. And it was on
14 Netflix at the time as well.

15 So I think that, you know, this type
16 of content, just because it is parsed in so
17 many places, I think it just -- it carries less
18 of a value. There is just more, more places
19 you can see it and there is more substitutes
20 for it.

21 Q. Let's talk for a minute about the
22 licensing fees that you paid for programming
23 outside of the compulsory license context when
24 you were at DirecTV.

25 A. Um-hum.

1 Q. How did the licensing fees that you
2 paid for team sports programming compare to
3 licensing fees for other types of programming?

4 A. Well, it was multiples. I think it's
5 no secret that ESPN is, I guess, I would call
6 it a poster child for high sports rights fees,
7 and everybody kind of reads in their local
8 paper, when there is a dispute, how much ESPN
9 costs.

10 So if I use that as an example, I
11 think that, you know, I can say that if I
12 looked at ESPN and its license fees in any
13 given year, and then I guess compared it
14 against some, you know, networks that don't
15 carry sports, that would be, you know, in the
16 higher range of content like a USA Network or a
17 Disney, you would, you know, if you did the
18 comparison, you could see that ESPN would be
19 multiples, probably four-five-six-seven times
20 of what those other networks would be.

21 Q. Have you reviewed the written
22 testimony of Program Suppliers' witness Sue Ann
23 Hamilton?

24 A. Yes, I have.

25 Q. Ms. Hamilton testifies that audience

1 viewing is the best measure of the relative
2 value of programming.

3 In your experience in the industry, is
4 there a one-to-one correlation between audience
5 viewing and value?

6 A. No, not to my prior point. I think
7 that -- I think if you could -- you could look
8 at it one of two ways.

9 I think in the example that I gave
10 you, if you are kind of comparing ESPN to, say,
11 a Disney or a USA Network, those networks, I
12 put an example in my testimony, we looked at a
13 certain year and it had certain viewer --
14 similar viewership, all three of those
15 networks, and then you could just see how
16 wildly different the license fees were.

17 And, conversely, I think you could
18 look at networks that have similar license
19 fees. So they could be all bunched together
20 and within a small range, but they could have
21 greatly different viewership numbers.

22 Q. Have you reviewed the written
23 testimony of Dr. Mark Israel?

24 A. Yes, I have.

25 Q. I will ask Geoff to place on the

1 screen Table 9 from Dr. Israel's written
2 rebuttal testimony.

3 Would you please tell us what this is?

4 A. Yes. So this is Dr. Israel's -- I
5 think he called it his cable content analysis.

6 And basically what he performed here
7 was he looked at -- basically he kind of took
8 the top 25 networks in terms of distribution
9 and then he basically kind of broke out the
10 expenditures that all of these top 25 networks
11 spent for JSC and non-JSC programming.

12 So you can see the line item from JSC
13 programming, the expenditures line, and kind of
14 as a percentage of overall budget you can see
15 that number of 22, almost 23 percent.

16 And so then, for comparison purposes,
17 he did this so that you could kind of see how
18 there really is no -- that correlation really
19 isn't there because, if you look at the
20 household viewing hours, it represents less
21 than 3 percent of the Joint Sports Claimant
22 programming, less than 3 percent of the
23 overall, you know, viewing hours of all those
24 top 25 networks, programming hours, again,
25 another small number.

1 But I think it just really goes to
2 show you that the viewership and the value or
3 expenditures that people are spending on -- or
4 that networks are spending on this programming
5 just doesn't -- that doesn't correlate.

6 Q. And we're now going to place on the
7 screen Table 10 from Dr. Israel's written
8 rebuttal testimony.

9 Would you please tell us about this
10 table?

11 A. Sure. So this is a similar analysis
12 although he just -- he broke it down for two
13 specific networks. And I think these are
14 illustrative, because I think that both of
15 these networks carry JSC and non-JSC
16 programming. So you can see, you know, CBS
17 carries Major League Baseball, among other
18 things, and TNT carries NBA games.

19 And so, again, you can kind of just
20 see he took the overall programming budget for
21 both of these channels and then broke out the
22 JSC programming, you know, and the non-JSC
23 programming.

24 So you can just kind of see the
25 expenditures item list there in column C,

1 again, near 50 percent for these channels is
2 what they are spending on the JSC programming.
3 And then if you look at the household viewing
4 hours or the programming hours, the percentages
5 are just much, much less.

6 Q. Are the results that you're talking
7 about in Dr. Israel's analysis in Tables 9 and
8 10 from his rebuttal testimony, are these
9 consistent with your experience in the
10 distribution industry?

11 A. Yes, they are.

12 Q. What role does audience viewing data
13 play in the video distribution industry?

14 A. I mean, certainly we looked at it. It
15 is one of a number of factors that we would
16 look at when we were kind of commencing
17 negotiation.

18 Personally I would look at it. I
19 would do basically an analysis of the last
20 several years. If the channel is coming up for
21 renewal, it was just kind of more of a
22 benchmark to see how it had performed, whether
23 ratings had kind of been generally going up or
24 generally going down.

25 But it was definitely not a

1 determinative factor in -- in negotiations.
2 And certainly when it came to the 11th hour,
3 the focus was much more on how important was
4 that particular type of programming that
5 channel had versus what its ratings were.

6 And, you know, it is clearly they are
7 used for ad sales purposes. You could look at
8 a TBS or a TNT and they certainly bring in a
9 decent amount of their revenue from advertising
10 sales.

11 And so ratings are important to the
12 networks themselves. But MVPDs don't really --
13 the amount of advertising time we get and the
14 amount we sell is just not a big revenue item
15 for us. So that doesn't really factor in.

16 It's not -- really in normal
17 experience, I never remember it being part of a
18 contract, so it was never -- ratings were never
19 kind of part of a rate sheet that said, well,
20 if your ratings go up on this network, then
21 your rate goes up and, vice versa, if your
22 ratings go down, your rate goes down.

23 It was not ever in the representations
24 and warranties or breaches, so just, again, it
25 was a factor we looked at, but, again, when

1 push came to shove in making a decision or, you
2 know, negotiating the contract, it didn't fit
3 in there.

4 And we did not, certainly when I was
5 -- when the station group was reporting it to
6 me, we did not use ratings for evaluating
7 distant networks.

8 Q. Thank you.

9 I'd like to now discuss for a few
10 minutes DirectTV's carriage of distant signals.

11 Did DirectTV carry WGNA during the
12 period 2010 to 2013?

13 A. Yes, it did.

14 Q. Do you know how much of DirectTV's
15 spending for Section 119 royalties were paid
16 for retransmitting WGNA?

17 A. Yeah, on average it was about
18 75 percent of the amount that we paid into the
19 copyright tribunal was for carriage of WGNA.

20 Q. Why did DirectTV carry WGNA?

21 A. It was definitely because of the live
22 sports. It was -- we saw real value in, you
23 know, there was, I think, 100 or so games. We
24 saw real value in the Cubs, the Bulls, and the
25 White Sox.

1 And I think that they not only serve,
2 you know, certainly look at a team like the
3 Cubs, which has a national following, they
4 certainly, you know, have a following
5 nationwide.

6 And so it serves a particular fan base
7 in that respect. But also just having national
8 games is important. You know, a lot of -- you
9 have a lot of networks out there, MLB or ESPN,
10 that carry nationally-televised games and
11 sports fans, you know, it's -- it's -- when
12 sports fans are looking for something, even if
13 you are not a particular fan of that maybe
14 team, you're going to want to watch sports. So
15 it was valuable to us.

16 Q. Did you place value on the syndicated
17 sitcoms and movie reruns on WGNA?

18 A. Not really. I don't think that at the
19 time I probably, when I was negotiating our
20 deal, I think I may have known what, you know,
21 had a general idea of what else was on other
22 than the Cubs games, but -- and then the White
23 Sox and Bulls, but I think that it wasn't -- it
24 wasn't a -- I wouldn't have really put a lot of
25 value on that, I guess.

1 I think that, you know -- and just
2 getting back to the ratings, I think you could
3 say that, you know, a show like 30 Rock or a
4 Saturday night movie may have decent ratings,
5 and they may have done, you know, fairly well
6 on a network like WGNA.

7 But I think that, again, you go back
8 to what's really important, what I consider
9 important to the customer.

10 And so even though a show may have
11 decent ratings, I think in the examples of a 30
12 Rock -- a sitcom or a movie, people aren't
13 sitting down to watch, I don't think, that
14 particular show day and day. I don't think
15 someone is sitting down every night to watch
16 Seinfeld or 30 Rock at a certain time.

17 So I think that, you know, again, it's
18 kind of fungible, that if I were to have to
19 drop WGNA, I would have a much harder time
20 telling the subscriber to find their sports
21 content elsewhere, where I wouldn't have as
22 difficult a time telling that subscriber where
23 to find the more general entertainment sitcom
24 and movie-type programming. There are lots of
25 other places for them.

1 Q. Did you negotiate a carriage agreement
2 with WGNA during the period 2010 to 2013?

3 A. Yes, I did.

4 JUDGE BARNETT: Before we go there, it
5 is time to stop for the day. So we will be at
6 recess until 9:00 o'clock in the morning.

7 (Whereupon, at 4:40 p.m., the hearing
8 recessed, to reconvene at 9:00 a.m. on Tuesday, March
9 13, 2018.)

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1 C O N T E N T S

2 WITNESS: DIRECT CROSS REDIRECT VOIR DIRE

3 MARK ISRAEL

4 By Mr. Laane 2813

5 By Mr. Cho 2876

6 By Mr. MacLean 2946

7 By Mr. Cosentino 3019

8 By Mr. Olaniran 3040

9 By Mr. Laane 3130

10 DANIEL HARTMAN

11 By Mr. Cantor 3132

12 By Ms. Plovnick 3135

13 By Mr. Cantor 3136

14

15 CONFIDENTIAL SESSIONS: 2916-2933

16 AFTERNOON SESSION: 2985

17 E X H I B I T S

18 EXHIBIT NO: MARKED/RECEIVED REJECTED

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20 1113 2896

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22 1115 2896

23 1118 2896

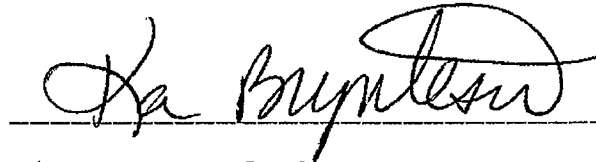
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CERTIFICATE

I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

3-12-18



Date

Signature of the Court Reporter

Determination of Cable Royalty Funds Docket No. 14-CRB-0010-CD (2010-2013) March 12, 2018
OPEN SESSIONS

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